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JUN 26 1957
JOHN T. FEY, Clerk

# No. 13,424

## JOINT APPENDIX

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# United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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HERBERT BROWNELL, JR., Attorney General, and as Successor to the Alien Property Custodian,

*Appellant,*

v.

ANNI H. J. E. OEHMICHEN,

*Appellee.*

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**Appeal from the United States District Court for the District of Columbia**

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United States Court of Appeals
for the
District of Columbia Circuit
AUG 15 1956
CLERK

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# United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 13,424

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HERBERT BROWNELL, JR., Attorney General, and as Successor to the Alien Property Custodian,

*Appellant,*

v.

ANNI H. J. E. OEHMICHEN,

*Appellee.*

---

Appeal from the United States District Court for the District of Columbia

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## JOINT APPENDIX

CIVIL DOCKET

| | |
|---|---|
| 1954 | |
| December 1 | Complaint, Appearance filed. |
| 1955 | |
| January 28 | Answer of defendant to Complaint; c/m 1-28-55; app. Dallas S. Townsend, James D. Hill, George B. Searls, and Victor R. Taylor. |
| 1956 | |
| March 16 | Pre-trial proceedings, depositions to be taken within 2 weeks. Reporter R. Theil. Laws, C.J. |
| March 23 | Notice of defendant of taking deposition of Oscar F. Meredith, proof of service filed. |
| April 5 | Deposition of Oscar F. Meredith of 4-3-56 published and filed. |
| April 10 | Trial begun, respited until 4-11-56. Reporter Ida Watson. Holland, J. |
| April 10 | Notice to defendant to produce documents at trial c/s 4-5-56 filed. |
| April 11 | Trial resumed, respited to 4-12-56. Reporter Ida Watson. Holland, J. |
| April 12 | Trial resumed and concluded. Court directs both plaintiff and defendant to submit proposed findings of fact and conclusions of law. Reporter Ida Watson. Holland, J. |
| April 18 | Findings of fact and conclusions of law. Reporter Ida Watson. Holland, J. |

| | |
|---|---|
| April 20 | Judgment for plaintiff for return of property vested under Trading with the Enemy Act (N). Holland, J. |
| May 29 | Notice of appeal of defendant from order April 20, 1956. (Copy to Pehle, Lesser, Mann, Riemer and Luxford) filed. |

Filed Dec. 1, 1954 Harry M. Hull, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 5090-54

ANNI H. J. E. OEHMICHEN
175 Riverside Drive, New York 24, New York
Plaintiff

v.

HERBERT BROWNELL, JR.,
Attorney General of the United States
Department of Justice, Washington 25, D. C.
Defendant

COMPLAINT
ACTION FOR THE RETURN OF PROPERTY

Plaintiff, ANNI H. J. E. OEHMICHEN, complaining of the Defendant, by her attorneys, Pehle, Lesser, Mann, Riemer & Luxford alleges:

(1) This action is brought under Section 9(a) of the Trading with the Enemy Act, Act of October 6, 1917, 40 Stat. 419, as amended, Tit. 50, U.S.C. Appendix, Sec. 9(a), to establish plaintiff's interest, right and title in certain property and to obtain its return, together with any increment thereon, or the proceeds thereof, said property having been vested in 1947, 1950 and 1951 under

the Trading with the Enemy Act, as amended, by the Attorney General of the United States as successor under Executive Order No. 9788, 11 F.R. 11981, to the authority, rights, privileges, powers, duties and functions of the Alien Property Custodian, and now being held by said Attorney General.

(2) On December 9, 1947, the then Attorney General, acting as such, executed and issued and caused to be executed and issued by and through one David L. Bazelon, then Assistant Attorney General and Director of the Office of Alien Property, under the authority of the Trading with the Enemy Act, as amended, and Executive Order No. 9193, as amended, and Executive Order No. 9788, VESTING ORDER NO. 10309, a true and exact copy of which is annexed hereto as Exhibit A, and incorporated herein by reference as fully as if the same were set forth herein verbatim. The property thereby vested consisted of a checking account in a Chicago bank in the name of plaintiff's husband, Erhard M. Oehmichen, and a checking account in a Newark bank in the name of plaintiff's husband and plaintiff herself.

(3) On May 24, 1950, the then Attorney General, acting as such, executed and issued and caused to be executed and issued by and through one Harold I. Baynton, then Acting Director of the Office of Alien Property, under the authority of the Trading with the Enemy Act, as amended, and Executive Order No. 9193, as amended, and Executive Order No. 9788, VESTING ORDER NO. 14696, a true and exact copy of which is annexed hereto as Exhibit B, and incorporated herein by reference as fully as if the same were set forth herein verbatim. The property thereby vested consisted of 20 shares of no par value common stock, constituting all of the outstanding capital stock of United States Imports and Exports, Inc., a New Jersey corporation, of which 18 shares were registered in the name of plaintiff's husband, Erhard M. Oeh-

michen, one was registered in plaintiff's name, and one was registered in the name of I. E. Wilhelm.

(4) On June 12, 1951, the then Attorney General, acting as such, executed and issued and caused to be executed and issued by and through one Harold I. Baynton, then Assistant Attorney General and Director of the Office of Alien Property, under the authority of the Trading with the Enemy Act, as amended, and Executive Order No. 9193, as amended, and Executive Order No. 9788, VESTING ORDER NO. 18042, a true and exact copy of which is annexed hereto as Exhibit C, and incorporated herein by reference as fully as if the same were set forth herein verbatim. The property thereby vested consisted, *inter alia*, of all property rights in and claims against United States Imports and Exports, Inc., which were then owned by plaintiff.

(5) Plaintiff and/or her husband were the sole and absolute owners of all interest, right and title in the vested property described in paragraphs 2, 3 and 4 above immediately prior to its vesting.

(6) Plaintiff's husband, Erhard M. Oehmichen, died on May 19, 1948, and plaintiff has succeeded to all his interest, right and title in the property described in paragraphs 2 and 3 above.

(7) At no time since December 7, 1941, has either plaintiff or her husband been an "enemy" or "ally of enemy", as those terms are defined in Sec. 2 of the Trading with the Enemy Act.

(8) Plaintiff has duly filed with the defendant Attorney General of the United States, as successor to the authority, rights, privileges, powers, duties and functions of the Alien Property Custodian, a notice of claim with respect to the property vested as aforesaid, the increment thereon and the proceeds thereof, under oath and in such form and containing such particulars as the defendant

Attorney General of the United States required. Plaintiff has made no application in the premises to the President.

(9) No compensation has been paid or tendered to plaintiff or her husband by or on behalf of the defendant or the United States of America on account of such vesting of the property of plaintiff and her husband, and no return of such property, the increment thereon or the proceeds thereof, has been offered or made.

(10) Such vesting of plaintiff's property is and was without warrant in law and is and was in violation of the prohibition against the taking of private property for public use without just compensation contained in Amendment V of the United States Constitution.

WHEREFORE, plaintiff prays that this honorable Court issue its judgment

(a) establishing her interest, right and title in the vested property described in paragraphs 2, 3 and 4;

(b) ordering the payment, conveyance, transfer, assignment and delivery to plaintiff of such money and other property, together with any increment thereon and the proceeds thereof, so held by the defendant, or the interest therein to which the Court thus determines that plaintiff is entitled;

(c) granting such other, further and different relief as to the Court may appear just and proper in the premises.

Respectfully submitted,

PEHLE, LESSER, MANN, RIEMER & LUXFORD
By: John W. Pehle
A Member of the Firm

Filed Dec. 1, 1954 Harry M. Hull, Clerk

Form APC-60
Rev. 6-2-47

EXHIBIT A

D-28-5243-E-1
D-28-5243-E-2

OFFICE OF ALIEN PROPERTY
Department of Justice

Vesting Order 10309

Re: Bank accounts owned by Eva Oehmichen and Erhard M. Oehmichen, also known as E. M. Oehmichen

Under the authority of the Trading with the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Eva Oehmichen and Erhard M. Oehmichen, also known as E. M. Oehmichen, whose last known addresses are Germany, are residents of Germany and nationals of a designated enemy country (Germany);

2. That the property described as follows:

a. That certain debt or other obligation owing to Erhard M. Oehmichen, also known as E. M. Oehmichen, by The First National Bank of Chicago, Chicago 90, Illinois, arising out of a Checking Account, entitled E. M. Oehmichen, and any and all rights to demand, enforce and collect the same, and

b. That certain debt or other obligation owing to Eva Oehmichen and Erhard M. Oehmichen, also known as E. M. Oehmichen, by Fidelity Union Trust Company, 755 Broad Street, Newark, New Jersey, arising out of a Checking Account, entitled Mr. Erhard M. and Mrs. Eva Oehmichen, and any and all rights to demand, enforce and collect the same,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, the aforesaid nationals of a designated enemy country (Germany);

and it is hereby determined:

3. That to the extent that the persons named in subparagraph 1 hereof are not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country (Germany).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

THERE IS HEREBY VESTED in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

(40 Stat. 411, 50 U.S.C. App. 1; 55 Stat. 839, 50 U.S.C. App. Sup. 616; Pub. Law 322, 79th Cong., 60 Stat. 50; Pub. Law 671, 79th Cong., 60 Stat. 925; E.O. 9193, July 6, 1942, 7 F.R. 5205, 3 CFR, Cum. Supp.; E.O. 9567, June 8,

1945, 10 F.R. 6917, 3 CFR, 1945 Supp.; E.O. 9788, Oct. 14, 1946, 11 F.R. 11981)

Executed at Washington, D. C., on December 9, 1947.

For the Attorney General:

/s/ David L. Bazelon
David L. Bazelon
*Assistant Attorney General*
Director, Office of
Alien Property

(Official Seal)

Form APC-60
Rev. 6-2-47

EXHIBIT B
D-28-739-E-1

DEPARTMENT OF JUSTICE
OFFICE OF ALIEN PROPERTY

Vesting Order 14696

Re: United States Imports and Exports, Inc.

Under the authority of the Trading with the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law after investigation, it is hereby found:

1. That Anni Helene Johanna Eva Wilhelm Oehmichen, also known as A. H. J. Oehmichen, on or since the effective date of Executive Order 8389, as amended, and on or since December 11, 1941, has been a resident of Germany and is a national of a designated enemy country (Germany);

2. That Irmgard E. Wilhelm, also known as I. E. Wilhelm, whose last known address is Germany, is a resident of Germany and a national of a designated enemy country (Germany);

3. That all of the outstanding capital stock of United States Imports and Exports, Inc., a corporation, partnership, association or other business organization, organized under the laws of the State of New Jersey and a business enterprise within the United States consisting of 20 shares of no par value common stock registered in the names of the persons listed below in the amounts appearing opposite said names as follows:

| *Name in which Registered* | *Number of Shares* |
|---|---|
| Erhard Max Oehmichen | 18 |
| A. H. J. Oehmichen | 1 |
| I. E. Wilhelm | 1 |

is owned by Anni Helene Johanna Eva Wilhelm Oehmichen, also known as A. H. J. Oehmichen and Irmgard E. Wilhelm, also known as I. E. Wilhelm and is evidence of ownership and control of United States Imports and Exports, Inc.

and it is hereby determined:

4. That United States Imports and Exports, Inc. is controlled by, or acting for or on behalf of a designated enemy country (Germany) or persons within such country and is a national of a designated enemy country (Germany);

5. That to the extent that the persons named in subparagraphs 1 and 2 hereof and United States Imports and Exports, Inc. are not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country (Germany);

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

THERE IS HEREBY VESTED in the Attorney General of the United States the 20 shares of no par value common stock of United States Imports and Exports, Inc. more fully described in subparagraph 3 hereof, together with all declared and unpaid dividends thereon, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

THE DIRECTION, MANAGEMENT, SUPERVISION AND CONTROL of United States Imports and Exports, Inc. and all property of any nature whatsoever situated in the United States, owned or controlled by, payable or deliverable to, or held on behalf of or on account of, or owing to, said business enterprise is hereby undertaken, to the extent deemed necessary or advisable from time to time. This Order shall not be deemed to limit the power to vary the extent of or terminate such direction, management, supervision or control.

The terms "national", "designated enemy country" and "business enterprise within the United States" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

(40 Stat. 411, 50 U.S.C. App. 1; 55 Stat. 839, 50 U.S.C. App. Sup. 616; Pub. Law 322, 79th Cong., 60 Stat. 50; Pub. Law 671, 79th Cong., 60 Stat. 925; E.O. 9193, July 6, 1942, 7 F.R. 5205, 3 CFR, Cum. Supp.; E.O. 9567, June 8, 1945, 10 F.R. 6917, 3 CFR, 1945 Supp.; E.O. 9788, Oct. 14, 1946, 11 F.R. 11981)

Executed at Washington, D. C., on May 24, 1950.

For the Attorney General:

/s/ Harold I. Baynton
Harold I. Baynton
Acting Director, Office of
Alien Property

Filed Dec. 1, 1954 Harry M. Hull, Clerk

Form APC-60 EXHIBIT C
Rev. 6-2-47 D-28-739

# DEPARTMENT OF JUSTICE
# OFFICE OF ALIEN PROPERTY

## Vesting Order 18042

Re: Debt owing to Asbach & Co. A.G. and claim owned by Anni Helene Johanna Eva Wilhelm Oehmichen also known as A. H. J. Oehmichen

Under the authority of the Trading with the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Asbach & Co. A.G., the last known address of which is Ruedesheim, Germany, is a corporation, partnership, association or other business organization, organized under the laws of Germany, and which has or, since the effective date of Executive Order 8389, as amended, has had its principal place of business in Germany, and is a national of a designated enemy country (Germany);

2. That Anni Helene Johanna Eva Wilhelm Oehmichen also known as A. H. J. Oehmichen, on or since the effective date of Executive Order 8389, as amended, and on or since December 11, 1941 has been a resident of Germany and is a national of a designated enemy country (Germany);

3. That the property described as follows:

That certain debt or other obligation owing to Asbach & Co. A.G., by United States Imports and Exports, Inc., c/o Office of Alien Property, New York, New York, representing merchandise purchased, together with any and all accruals thereto, and any and all rights to demand, enforce and collect the same,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, Asbach & Co. A.G., the aforesaid national of a designated enemy country (Germany);

4. That the property described as follows:

All right, title, interest and claim of any kind or nature whatsoever of Anni Helene Johanna Eva Wilhelm Oehmichen also known as A. H. J. Oehmichen, against United States Imports and Exports Inc., c/o Office of Alien Property, New York, New York, and any and all rights to demand, enforce and collect the same,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, Anni Helene Johanna Eva Wilhelm Oehmichen also known as A. H. J. Oehmichen, the aforesaid national of a designated enemy country (Germany);

and it is hereby determined:

5. That to the extent that the persons named in subparagraphs 1 and 2 hereof are not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country (Germany).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

THERE IS HEREBY VESTED in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in Section 10 of Executive Order 9193, as amended.

(40 Stat. 411, 50 U.S.C. App. 1; 55 Stat. 839, 50 U.S.C. App. Sup. 616; Pub. Law 322, 79th Cong., 60 Stat. 50; Pub. Law 671, 79th Cong., 60 Stat. 925; E.O. 9193, July 6, 1942, 7 F.R. 5205, 3 CFR, Cum. Supp.; E.O. 9567, June 8, 1945, 10 F.R. 6917, 3 CFR, 1945 Supp.; E.O. 9788, Oct. 14, 1946, 11 F.R 11981)

Executed at Washington, D. C., on June 12, 1951.

For the Attorney General:

/s/ Harold I. Baynton
Harold I. Baynton
*Assistant Attorney General*
Director, Office of
Alien Property

(Official Seal)

Filed Jan. 28, 1955 Harry M. Hull, Clerk

## ANSWER

Defendant Herbert Brownell, Jr., Attorney General of the United States, for his answer:

1. Admits the allegations contained in paragraph 1 of the complaint.

2. Admits the allegations contained in paragraph 2 of the complaint.

3. Admits the allegations contained in paragraph 3 of the complaint.

4. Admits the allegations contained in paragraph 4 of the complaint.

5. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5 of the complaint.

6. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6 of the complaint.

7. Denies each and every allegation contained in paragraph 7 of the complaint.

8. Admits the allegations contained in paragraph 8 of the complaint.

9. Admits the allegations contained in paragraph 9 of the complaint.

10. Denies each and every allegation contained in paragraph 10 of the complaint.

WHEREFORE defendant prays:

(a) the complaint be dismissed; (b) that defendant have such other and further relief as may be just in the premises; (c) the plaintiff pay to the defendant costs of this action.

DALLAS S. TOWNSEND
*Assistant Attorney General*
JAMES D. HILL
GEORGE B. SEARLS
VICTOR R. TAYLOR
*Attorneys,*
*Department of Justice*
Washington 25, D. C.
*Attorneys for Defendant.*

• • • •

Filed Mar. 16, 1955 Harry M. Hull, Clerk

## PRETRIAL PROCEEDINGS

STATEMENT OF NATURE OF CASE:

Suit by plaintiff pursuant to section 9(a) of the Trading with the Enemy Act, as amended (Tit. 50 U.S.C. Appendix, section 9(a)) to recover property vested by

him on December 9, 1947, May 24, 1950, and June 12, 1951. At the time of vesting the property was owned by plaintiff and/or her husband. Her husband died on May 19, 1948, and she has succeeded to all his interest, right and title in such property. At the time of the first vesting, both plaintiff and her deceased husband were physically within Germany.

Plaintiff claims that at the time of the respective vestings neither she nor her deceased husband were resident within Germany and therefore neither was an "enemy" within the meaning of the Trading with the Enemy Act, as amended.

While both were German nationals, plff had not resided in Germany since 1928 and her husband had not resided in Germany since 1923, when they entered the United States on permanent immigration visas and established permanent residence here, he in 1933, and she in 1934. They engaged in business here and built up a substantial import-export business, the fruits of which were the property vested by the Attorney General. Plaintiff's deceased husband declared his intention to become a citizen of the United States on August 25, 1941. On March 2, 1942, without warning or reason so far as counsel has been able to ascertain, plaintiff and her husband were arrested in the middle of the night in their apartment by agents of the Department of Justice and were locked up in the jail at East Orange, New Jersey. Plaintiff was released from incarceration the next day but plaintiff's deceased husband continued to be confined, first in the jail, then at Ellis Island, and subsequently in the Crystal City, Texas, alien internment camp. As soon as plaintiff's health permitted, she joined her husband where they remained in intermnent at Crystal City, Texas, until 1945. Under the duress of internment, its attendant conditions, and worries over each other's health, plaintiff and her deceased husband each requested

repatriation to Germany, as an alternative to indefinite internment. They were sent to Bregenz, Austria, arriving there on February 6, 1945, and plaintiff's husband was subsequently, in April, 1945, made a political prisoner by the German authorities. Within a short time after being made a prisoner French troops occupied Bregenz and plffs husband was released from imprisonment. After their arrival in Austria, and later Germany, plaintiff and her deceased husband made no attempt whatsoever to establish any business. Promptly after the cessation of hostilities they attempted to return to the United States, and in the meantime plaintiff's husband worked for the United States Army of occupation, being paid for his services. He died in Germany, however, before he was able to obtain his visa to return to the United States. Prior to departure from the United States, they stored many of their valuable possessions, including their automobile, refrigerator and washing machine, in temporary storage in the United States, and otherwise affirmatively indicated their intention to return to the United States upon the conclusion of the war.

Plaintiff returned here in February of 1949 on a permanent immigration visa, and has remained here ever since except for occasional business visits abroad. She has reestablished the business which she and her husband conducted prior to their internment. Accordingly, plaintiff contends that neither she nor her husband ever relinquished their United States residence and therefore they were not at the time of vesting resident within Germany and were not enemies within the meaning of the Trading with the Enemy Act, as amended.

Plaintiff further contends that even if her being physically within Germany after the beginning of the war between the United States and Germany gave her the status of an enemy, her status changed upon her departure from Germany and return to the United States and, accord-

ingly, she was not an enemy on the dates of the vestings of May 24, 1950, and June 12, 1951.

*Defendant's Statement*

Erhard M. Oehmichen and his wife, Anni, the plaintiff herein, were arrested in their home in East Orange, New Jersey, on March 2, 1942, by special agents of the Federal Bureau of Investigation on emergency authorization of the United States Attorney, Trenton, New Jersey, as dangerous enemy aliens. Both were German nationals.

Plaintiff was released shortly after her arrest. Her husband was taken to Ellis Island where he was held for some ten months. He was then interned at Crystal City, Texas. Plaintiff, at her own request, joined her husband in the internment camp at Crystal City. Plaintiff and her husband began filing petitions for repatriation to Germany as early as May 22, 1942. This was followed by petitions dated July 8, July 26, and September 7, 1942. The final petition, dated January 22, 1944, contained the qualification, "if possible during the war otherwise not". In January, 1945, plaintiff and her husband were placed aboard a repatriation ship bound for Marseilles, France. They arrived later that same month in the city of Breganz, Austria. On April 28, 1945, plaintiff's husband was arrested by the Breganz police. He was released some two days later upon the approach of the French Army. Plaintiff and her husband moved to Germany. Her husband died May 19, 1948, in Wiesbaden. Plaintiff returned to the United States on February 7, 1949, on a quota immigration visa. Deft denies plffs' claim that prior to the war, she and her husband had established permanent residence in the U.S. Deft denies that the requests of plff and her husband for repatriation were made under duress, that on the contrary were voluntarily made. Deft admits plff's husband was imprisoned in Austria as claimed, but denies he was a political pri-

soner. Deft denies that plff and her husband made no attempt to establish business in Germany or Austria after their alleged repatriation. Deft denies that plff and her husband made attempts to return to the U.S. after cessation of hostilities.

*The Issues*

1. Whether plaintiff and her husband were "resident within" Germany and therefore "enemies" within the Trading with the Enemy Act.

2. Whether plaintiff may recover property vested in 1950 and 1951.

*Defendant's Contentions on the Issues*

The defendant contends that the plaintiff and her husband went to Germany voluntarily in 1945 and were "resident within" that country, so they were "enemies" within the Act and may not recover in this action.

That the plaintiff and her husband had been interned does not create a presumption that their return to Germany was the result of duress.

2. The defendant also contends that, notwithstanding her return to the United States in 1949, her property was still vestible as "enemy" in 1950 and 1951.

STIPULATIONS

Parties stipulate authenticity of transcript of proceedings Aug. 7, 8, 1952 at Office of Alien Property Custodian bearing initials of the Court.

Parties will endeavor to stipulate documents within two weeks by placing initials of counsel indicating authenticity.

.2 weeks allowed for taking of depositions. Case to be set for trial April 9, 1956.

/s/ Bolitha J. Laws
Pretrial Judge

Dated Mar. 16, 1956

• • • •

Filed April 10, 1956 Harry M. Hull, Clerk

NOTICE

SIRS:

PLEASE TAKE NOTICE that you are required to produce at the trial herein on April 9, 1956, such documents, other than investigators' reports, contained or formerly contained in the files of the Alien Enemy Control Unit of the Department of Justice relating to one Erhard Max Oehmichen, of East Orange, New Jersey, as set forth the alleged facts on the basis of which Francis Biddle, then Attorney General of the United States, on March 2, 1942, issued a warrant authorizing and directing the arrest, detention and confinement until further order of said Erhard Max Oehmichen, and that plaintiff will if necessary apply to the Court at the outset of the trial herein for an order compelling the production of such documents.

Dated: April , 1956.

Yours, etc.

PEHLE, LESSER, MANN, RIEMER & LUXFORD
1210 Eighteenth Street, N. W., Washington 6, D. C.
By /s/ James H. Mann
Attorneys for Plaintiff

To:
George B. Searls, Esq.
Department of Justice
Attorney for Defendant

Filed April 18, 1956 Harry M. Hull, Clerk

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

### *Findings of Fact*

1. The property claimed by plaintiff in this action was at the time of vesting owned by plaintiff and/or her husband. Plaintiff's husband died on May 19, 1948 and by his will plaintiff succeeded to all of his right, title, and interest in such property.

2. Plaintiff has duly filed with the defendant the notice of claim required by section 9(a) of the Trading With the Enemy Act, as amended.

3. While both plaintiff and her husband were German citizens, plaintiff had not resided in Germany since 1928 and her husband had not resided in Germany since 1923 when they entered the United States on permanent immigration visas and established residence in the United States, he in 1933 and she in 1934.

4. Plaintiff and her husband engaged in business in the United States and built up a substantial import business.

5. Plaintiff's deceased husband declared his intention to become a citizen of the United States on August 25, 1941.

6. On March 2, 1942, without warning, plaintiff and her husband were arrested as enemy aliens in their apartment and, late at night, were taken by agents of the Federal Bureau of Investigation to the jail at East Orange, New Jersey, where they were locked up.

7. Plaintiff was released from incarceration the next day but plaintiff's deceased husband continued to be

confined at Ellis Island and subsequently at the Crystal City, Texas, Alien Internment Camp.

8. Prior to the time of their arrest, neither plaintiff nor her deceased husband had any intention to abandon their residence in the United States.

9. Because of her concern over the effects of internment on her husband's mental attitude and health, plaintiff became seriously ill and after recovery voluntarily joined her husband in the Crystal City Internment Camp in order that she and her husband might face their difficulties together and hoping that by being reunited with him her worries concerning him and his worries concerning her would be lessened and the health of each would be improved.

10. As a result of the internment and its effect on him plaintiff's husband requested repatriation and plaintiff made requests for repatriation to various departments and persons in the United States Government. Such requests were for repatriation and were clearly limited to repatriation during the time that internment was expected to last, i.e., the duration of the war.

11. Plaintiff and her husband at all times intended to return to the United States after the end of hostilities.

12. All requests for repatriation were made for the sole purpose of freeing plaintiff's husband from internment and were made solely because of internment and its attendant conditions.

13. Plaintiff and her husband were well treated by the authorities; however, pro-Nazi groups which were in the majority at the internment camp at Crystal City continually stirred the emotions, fears and anxieties of plaintiff and her husband.

14. Plaintiff's husband was once physically attacked and at another time an attack on him was prevented by

others present. A stone was thrown at him on one occasion and at another time pro-Nazi groups shouted that he should be hanged.

15. Plaintiff and her husband were ostracized by the pro-Nazi groups in the internment camp which were a majority of the German internees. Such ostracism resulted in their being deprived of certain recreational and other privileges of the camp.

16. The requests for repatriation to Germany by plaintiff and her husband were made solely to escape internment and the emotional problems created thereby.

17. Plaintiff's husband was the highly-nervous type; he was not pro-Nazi, and the attitude of this group of internees toward him and plaintiff rendered his life as an internee particularly uncomfortable. Especially was this the case when he felt that his confinement was not justified if all the facts as to his sympathies were duly weighed.

18. Prior to joining her husband in internment, plaintiff stored their automobile and household furnishings in temporary storage and rented and maintained a space in which to keep their office furniture and files.

19. In January, 1945, plaintiff and her husband were returned to Europe aboard the Gripsholm and they were sent to Bregenz, Austria, where they remained until the end of hostilities in Europe.

20. While in Bregenz, plaintiff's husband was arrested and jailed by the Gestapo as a political prisoner and was freed only when the German authorities fled before the advance of the French Army which occupied Bregenz.

21. After leaving Bregenz, plaintiff and her husband spent short times in Bavaria, Hamburg and Wiesbaden.

22. While at Wiesbaden plaintiff's husband performed valuable services for the American Army of Occupation for which he was highly commended.

23. Plaintiff and her husband, as soon as hostilities in Europe had ended, made every effort they could to return to the United States and solicited the intervention of friends and relatives in the United States before the United States immigration authorities to aid their return.

24. At no time while they were in Austria or Germany did plaintiff or her husband seek employment or engage in business except for plaintiff's husband's employment with the United States Army of Occupation.

25. Plaintiff's husband was offered opportunities to engage in business in Germany which he did not accept.

26. After the death of plaintiff's husband on May 19, 1948, plaintiff went to Switzerland in order to obtain a visa more quickly than she could in Germany to return to the United States. On February 17, 1949, she returned to the United States as a quota immigrant. She has remained here as a resident since, and is now a citizen of the United States.

27. Plaintiff, after her return to the United States, brought her father and other relatives from Germany here to the United States to live.

28. After plaintiff's furnishings were stored, both she and her husband, while in the United States and in Europe, refused offers to buy their automobile and certain household appliances at premium prices because they planned to use these possessions again upon their return to the United States.

29. The car, household furnishings and personal effects, which plaintiff and her husband had in storage,

were reclaimed by plaintiff after she returned to the United States in 1949.

30. Plaintiff has reclaimed the business furnishings, files and equipment which she and her husband used prior to their arrest on March 2, 1942, and she has reestablished the business which she and her deceased husband formerly conducted in the United States.

31. Neither plaintiff nor her husband ever abandoned their residence in the United States.

*Conclusions of Law*

1. This is an action brought under Section 9(a) of the Trading With the Enemy Act, as amended, to recover property vested by the Attorney General of the United States. This Court has jurisdiction of the Action.

2. The property claimed by plaintiff in this action was at the time of vesting owned by plaintiff and/or her husband.

3. After the death of plaintiff's husband, plaintiff succeeded to all of his right, title, and interest in such property by virtue of his will.

4. Plaintiff is entitled to a return of the vested property unless she of [sic] her husband were "enemy."

5. Upon the pleadings and all the proceedings had herein, the only issue in the case is whether plaintiff or her husband were "enemy" by virtue of being "resident within the territory of any nation with which the United States is at war."

6. Plaintiff and her husband were residents of the United States since long prior to the outbreak of World War II and were residents of the United States at the time of their departure for Germany on the Gripsholm in January, 1945.

7. Neither plaintiff nor her husband ever abandoned their residence in the United States.

8. Physical presence within enemy territory of plaintiff and her husband did not constitute residence within enemy territory because it resulted from choosing repatriation as the alternative to continued indefinite imprisonment. *Akata* v. *Brownell*, 125 F. Supp. 6 (DC Haw. 1954).

9. The requests made by plaintiff and plaintiff's husband for repatriation were motivated solely by the human desire to free themselves from confinement and their repatration under such circumstances did not constitute their presence in Germany "residence" volitionally assumed and voluntarily acquired. *Nagano* v. *McGrath*, 187 F. 2d 759, 764 (7th Cir. 1951) Aff'd. 342 US 916; *Dos Reis* v. *Nicolls*, 161 F. 2d 860 (1st Cir. 1947); *Podea* v. *Acheson*, 179 F. 2d 306 (2nd Cir. 1950); *In re Gogal*, 75 F. Supp. 268 (W.D. Pa. 1947); *Schioler* v. *United States*, 75 F. Supp. 353 (N.D. Ill. 1948); *Ishikawa* v. *Acheson*, 85 F. Supp. 1 (D.C. Haw. 1949); *Shibata* v. *Acheson*, 86 F. Supp. 1, (S.D. Cal. 1949); *Parrachini* v. *McGrath*, 103 F. Supp. 184 (S.D.N.Y. 1952).

10. Residence can only be acquired as a result of a free and intelligent choice. Since the requests for repatriation of plaintiff and her husband were not the result of their free and intelligent choice but rather a result of their desire to free themselves from imprisonment and mental fears, intimidations and coercions stemming from the action of pro-Nazi elements in the internment camp, they were deprived of the free exercise of their will when they requested repatriation. *Acheson* v. *Murakami*, 176 F. 2d 953 (9th Cir. 1949). On the question as to duress influencing decision, I hold that such duress must measure up to a threat to the present or future welfare of the party acting. The repatriation of the plaintiff and

her husband in this case was not the result of duress in that sense. By a strained construction their return to Europe may be considered the result of a threat of a continuance of their unpleasant situation which they were experiencing as internees, but I do not think that such continuance can be considered as a threat influencing action under duress. I do think, however, their situation among pro-Nazis when they were not of that school, prompted and influenced them in deciding to apply for a return to Europe temporarily, but with a fixed determination to return to the United States after the war. Their whole effort, after arrest, during detention, and after their return to Europe was only to remain there temporarily. As such sojourners they were not "residents within" enemy territory after returning on the Gripsholm and were not "enemies" under the provisions of the Trading With the Enemy Act.

11. The intention required to acquire residence was not present in this case. Accordingly, neither plaintiff nor her husband were ever resident within enemy territory and therefore were never enemies. *Guessefeldt* v. *McGrath*, 342 U.S. 308 (1952).

12. Neither plaintiff nor her husband were ever "resident within the territory of a nation with which the United States is at war".

13. Plaintiff was not an "enemy" at the time of the vestings of May 24, 1950 and June 12, 1951, because she was not then "resident within the territory of any nation with which the United States is at war".

14. Neither plaintiff nor her husband is an "enemy" within the meaning of the Trading with the Enemy Act, as amended.

15. Plaintiff is entitled to a return of the property claimed herein.

16. Judgment is hereby ordered to be entered for a return to he plaintiff of the property claimed herein.

John W. Holland
Judge

April 18, 1956

* * * *

Filed April 20, 1956 Harry M. Hull, Clerk

JUDGMENT

This cause having been duly tried before Honorable John W. Holland, United States District Judge, without a jury, on April 10, 11, and 12, 1956, and the proofs on the part of the plaintiff and defendant having been duly submitted and heard, plaintiff having appeared by Pehle, Lesser, Mann, Riemer and Luxford, her attorneys (James H. Mann and Dean B. Lewis, Esqs., of counsel) and the defendant having appeared by George B. Searls, Esq., his attorney, and the Court having heretofore duly made and entered findings of fact and conclusions of law,

Now, on said findings of fact and conclusions of law, and on motion of James H. Mann, Esq., of counsel for the plaintiff, it is

ORDERED, ADJUDGED and DECREED this 20 day of April, 1956, that the defendant pay, convey, transfer, assign and deliver to the plaintiff, subject to the provisions of Sections 20 and 32(g) of the Trading with the Enemy Act, as amended, all of the property described in paragraph 2 of Vesting Order No. 10309, dated December 9, 1947, paragraph 3 of Vesting Order No. 14696, dated May 24, 1950, and paragraph 4 of Vesting Order No. 18042, dated June 12, 1951 or the proceeds thereof together with any and all increment thereon.

/s/ John W. Holland
United States
District Judge

. . . .

10 Now, Your Honor as I indicated in my opening statement, ever since this night of March 2, 1942, either Plaintiff, or Plaintiff and her husband, or someone has been trying to ascertain why these people were taken and why they were put in jail.

We have had an administrative hearing on this. We tried to find out from the Government at that time, before the hearing, unsuccessfully. We tried to find out from the Government at the time of the hearing, unsuccessfully.

Now, Your Honor, I have a notice to produce, which has been served upon the attorney for the Defend-
11 ant; and I would like to ask Mr. Searls at this time if he has produced the documents that are set out in this notice to produce?

MR. SEARLS: I have not, Your Honor.

MR. MANN: Your Honor, I move this honorable Court for an order directing Mr. Searls to produce the documents set out in the notice to produce.

. . . . . .

19 MR. MANN: . . .

. . . . . .

Now, we say that the Government, Your Honor, should not be in the position to put this man in jail and force him to go to Germany, and then claim that he was resident there.

20 I want to reiterate, the relevance of this matter is the effect that this had upon this man. Not all Germans were interned, Your Honor. Just certain Germans were interned; and, generally speaking, I think, when that happened, the Government had good reason for doing so. But this was a case where we think the Government made a mistake; and that had a profound effect upon the mind of this man.

THE COURT: Well, I think the motion should be denied. * * *

* * * *

So I don't think good cause is shown. Those are my reasons for denying the motion. That is without prejudice. If, during the trial, you want to renew it, and you show and persuade me there is a reason for it at that time, why, you can raise it again.

* * * *

ANNI HELENE JOHANNA OEHMICHEN

was called as a witness in her own behalf and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MANN:

Q Please give your full name and address. A Anni Helene Johanna Oehmichen, 175 Riverside Drive, New York.

Q Are you the plaintiff in this action? A Yes.

MR. MANN: I will ask the Clerk to please mark for identification as Plaintiff's 1, 2 and 3, these documents.

(Whereupon Plaintiff's Exhibits Nos. 1, 2 and 3, were marked for identification.)

MR. MANN: If Your Honor please, I have in my hand the three vesting orders concerning the property claimed. I believe Mr. Searls has no objection to the introduction in evidence.

MR. SEARLS: No objection, Your Honor. Those are the orders showing the seizure of the property.

MR. MANN: I introduce these or offer these in evidence as Plaintiff's 1, 2 and 3.

THE COURT: Admitted.

(Whereupon Plaintiff's Exhibits Nos. 1, 2 and 3 were received in evidence.)

MR. SEARLES: Are you offering those in chronological order; so I can keep my list?

MR. MANN: I am.

BY MR. MANN:

Q Mrs. Oehmichen, I show you Plaintiff's Exhibit No. 1, Plaintiff's Exhibit No.2 and Plaintiff's Exhibit No. 3, and I ask you, have you seen them before? A I have seen Exhibits 2 and 3; but I have not seen Exhibit No. 1.

Q Would you look at Exhibit No.1? Have you read it? A Yes.

Q Mrs. Oehmichen, do you claim the property that is listed in Plaintiff's Exhibit No. 1, No. 2 and No. 3? A Yes, I do.

Q Do you claim all of it? A Yes, I do.

Q Mrs. Oehmichen, I direct your attention to the fact that Plaintiff's Exhibit No. 3 vests a certain debt or other obligation owing to Asbach & Co. Do you claim that? A No, I do not claim that.

Q Mrs. Oehmichen, was the property listed in those vesting orders your property at the time of vesting? A It was partly my property and partly my husband's property.

Q What was your husband's name? A Erhard M. Oehmichen.

Q Is he alive? A No.

Q When and where did he die? A Mr. Oehmichen passed away in Weisbaden on May 19, 1948.

* * * *

Q How did you succeed to your husband's rights in that property? A Mr. Oehmichen left a will.

Q And did he leave everything to you in that will? A Yes.

Q Was there administration of Mr. Oehmichen's estate taken out in the United States? A Yes.

Q Have all debts of that estate been paid? A Yes.

Q And are you the owner of all the property that was left in the estate? A Yes.

Q Mrs. Oehmichen, when did you first learn that
27 your property had been vested? A After my return in February 1949.

Q Mrs. Oehmichen, the Plaintiff's Exhibit No. 3 is dated June 12, 1951. Where were you on that date? A I was in Englewood, New Jersey.

Q Plaintiff's Exhibit No. 2 is dated May 24, 1950. Where were you on that date? A I was in Englewood, New Jersey.

Q Plaintiff's Exhibit No. 1 is dated December 9, 1947. Where were you on that date? A I was in Weisbaden, Germany.

Q At that time, did you consider Germany to be your home? A No.

Q How did you happen to be in Germany? A Mr. Mann, that is a long story. It dates back to the night of March 2, 1942 when, without a warning, the FBI came to our apartment in East Orange; searched the apartment; and later on, took Mr. Oehmichen and myself to the jail in East Orange. I was released the next day; and Mr. Oehmichen was taken to Ellis Island.

I tried to get Mr. Oehmichen released, but I was not successful. Then when it was suggested to me by the United States Attorney that the family camp was put up in Texas, I voluntarily joined Mr. Oehmichen's internment.

28 In the internment camp, Mr. Oehmichen was very upset. He could not stand the barbed wire. He was very despondent. He became very moody. He was irrational many times. And he had only one wish, to get away from the enclosure, from the confinement. And when various repatriation issues came out, we applied to be returned to Germany for the duration of the war.

That is how we came to be in Germany.

* * * *

Q Now, you mentioned your arrest on March 2. At that time, were you a German National? A Yes.

Q Was your husband a German National? A Yes, Mr. Mann.

Q Were both you and your husband born in Germany? A Yes.

Q When and where did you first meet your husband? A I met Mr. Oehmichen in Hamburg, Germany.

Q When was that, do you recall? A Oh, 1923.

Q In 1923? A That is right.

Q Did your husband subsequently leave Ger-
29 many? A Yes; Mr. Oehmichen left Germany to build up his own business in the Far East.

Q When did you first leave Germany? A I left Germany in 1928.

Q Tell us, if you know, why did Mr. Oehmichen leave Germany in 1923? A In Germany, the economic conditions were very unsettled. We had had an inflation. The question of unemployment was very big. And Mr. Oehmichen decided to try to make a living elsewhere.

Q Where did your husband go when he left Germany? A He went to the Far East, via the United States.

Q Did you ever see him in the Far East? A Yes, I did.

Q When was this? A I had some relatives in Shanghai.

Q When was this? A In 1928. And I met Mr. Oehmichen again.

Q So when you left Germany, you went to the Far East, and you renewed your acquaintanceship with Mr. Oehmichen there? A That is right.

Q This is before you were married? A That is right.

30 Q Now, tell us, if you know, when Mr. Oehmichen entered the United States as a resident? A Mr. Oehmichen entered the United States in 1933.

Q Where did he live from the time that he left Germany until he entered the United States in 1933? A In Japan and in China.

Q Where and when were you and Mr. Oehmichen married? A In London, England on May 9, 1934.

Q Why were you married in London? A At the time, Mr. Oehmichen—

THE COURT: May 9, what year?

THE WITNESS: 1934.

THE COURT: Thirty-four.

THE WITNESS: At the time there were various Hitler laws that anybody who got married had to show all his ancestors to prove whether they were Jewish or non-Jewish, as the case was; and Mr. Oehmichen did not want to adhere to all these regulations.

BY MR. MANN:

Q After your marriage in London, in 1934, did you and Mr. Oehmichen return to the United States? A Yes, we came back to the United States to live here.

Q When you entered the United States at that
31 time, what kind of a visa did you have? A I had an immigration visa.

Q What kind of a visa did your husband have? A Mr. Oehmichen had a reentry permit.

Q What business was your husband engaged in when you returned to the United States with him in 1934? A In the import business.

Q What products did he import? A Various wines, beers, liquors, other items, gloves, handbags, porcelain, glassware.

Q Where was the headquarters for this business? Where was his office? A In the beginning, the office was in Chicago; but in 1935, we decided to move to New York.

Q When you moved to New York, did you continue in the same business? A Yes.

Q Were you associated in this business with your husband? A Yes.

Q Did you and your husband continue the same line of business which you have mentioned until the time of the arrest which you described, the arrest on March 2, 1942? A Yes.

Q Now, this export-import business, was it con-
32 ducted in the name of a company? A Yes, Mr. Mann.

Q Were you in any way connected with that company? A I was a director of it.

Q Do you happen to know who held the stock? A Mr. Oehmichen did.

Q Now, Mrs. Oehmichen, did you and your husband have relatives living in the United States at the time that you came here? A Mr. Oehmichen's sister and her husband and their two children lived in Chicago.

Q Who were they; and where did they live? A Mr. and Mrs. C. Martin Rietel. They lived on 8022 Paxton Avenue, in Chicago.

Q To your knowledge, Mrs. Oehmichen, did your husband belong to any business or social groups or organizations in the United States? A Mr. Oehmichen belonged to the Down Town Club in Newark; and he belonged to the Maplewood Country Club in Maplewood; and he belonged to the Deutscher Verein in New York.

• • • •

33 Q And if that is translated into English, what does that mean? A German Club.

Q The German Club. Mrs. Oehmichen, what was the German Club? Tell us, if you know. A The members mostly were American citizens. It was a social club. It had nothing to do with politics.

Q It was strictly a social club? A Strictly a social club.

Q Mrs. Oehmichen, was your husband ever a member of the German-American Bund? A No.

Q Did your husband ever make a declaration of intention to become an American citizen? A Yes, Mr. Mann.

MR. MANN: Would you mark this for identification.

THE CLERK: Plaintiff's No. 4.

(Whereupon Plaintiff's Exhibit No. 4 was marked for identification.)

• • • •

34 BY MR. MANN:

Q Mrs. Oehmichen, I hand you Plaintiff's Exhibit No. 4, for identification, and I ask you—first I ask you, do you know the signature of your husband? A Yes, I do.

Q Does that document bear his signature? A Yes, it does.

Q Does it bear his photograph? A Yes, it does.

Q What is the document? A It is a Declaration
35 of Intention to become an American citizen.

• • • •

(Whereupon Plaintiff's Exhibit No. 4 was received in evidence.)

BY MR. MANN:

Q In so far as you know, did your husband at any time during or immediately preceding the war engage in any activity either in the United States or elsewhere on behalf of the German Government? A No.

Q Was your husband ever a member of the Nazi Party or a member of any group affiliated with the Nazi Party? A No.

Q Mrs. Oehmichen, you testified earlier that you
36 were arrested, you and your husband were arrested on the night of March 2. Please give us the circumstances of that arrest. A Several FBI agents came to our apartment and showed their identification, and began to search the apartment. One or two agents questioned Mr. Oehmichen; the other agents took apart the various things in the linen closet; they looked at paintings and pictures; took the books apart; and really searched the apartment.

Then when it became very late, they informed me that they would have to take us to the jail; and I was allowed to call the vetenarian to take care of our dog. We were taken to the jail in East Orange, and registered at the desk; and then we were both put into individual cells.

Q. Now, Mrs. Oehmichen, at the time that you were taken down to the East Orange, New Jersey jail, were you told why you were being arrested? A No.

Q Did you ask? A Yes.

Q But nobody told you? A No.

Q How long did you remain in jail? A Until the next day in the afternoon, late in the afternoon.

37 Q How long did your husband remain in jail? A He remained the same time in that jail, but he was taken to Ellis Island directly from jail.

Q Now you say you asked, when you were booked that first night, as to why you were arrested. Did you make any other efforts or did your husband make any other efforts to determine why you were being arrested? A Yes. I went to the Chief of Police in East Orange at first to find out about the reasons for the arrest. He could not give me any reasons. However, he offered to act as Mr. Oehmichen's sponsor at his hearing.

Then I requested various interviews with Mr. Lord, the United States Attorney who handled Mr. Oehmichen's case; but he also told me he could not give me any information.

Q Didn't he give you any indication at all as to why you were arrested, why Mr. Oehmichen was arrested? A At a later time, he informed me, while we were having a conversation, that Mr. Oehmichen was a businessman, and he knew a lot of influential people, and as such, he was considered potentially dangerous. But he had no specific reasen.

Q Now, how long after Mr. Oehmichen's arrest was it before Mr. Lord finally told you this? A About two months.

Q Mrs. Oehmichen, was the fact of your husband's arrest and incarceration, and your arrest and incarceration publicized in the newspapers?
38
A Yes.

MR. MANN: I will ask the Clerk to mark for identification these three items.

THE CLERK: Plaintiff's 5, 6 and 7, for identification.

(Whereupon Plaintiff's Exhibits Nos. 5, 6 and 7 were marked for identification.)

BY MR. MANN:

Q Mrs. Oehmichen, I show you Plaintiff's Exhibits No. 5, No. 6 and No. 7, for identification.

MR. SEARLS: Which is which? Will you identify them in some way?

MR. MANN: Plaintiff's Exhibit No. 5, for identification, bears the heading, "Tribune, March 6, '42." Plaintiff's Exhibit No. 6, for identification, "Times." Plaintiff's No. 7, for identification, bears a handwritten notation, "Star and Ledger, March 5, 1942."

BY MR. MANN:

Q Mrs. Oehmichen, what are those documents? A These are newspaper reports about Mr. Oehmichen's arrest.

Q Have you ever seen them before? A Yes.

39 Q Did you, personally, clip those items from the press? A Yes, I did.

Q Are you familiar with the substance of those newspaper reports, Mrs. Oehmichen? A Yes, I am.

MR. SEARLS: No objection.

MR. MANN: I offer these in evidence as Plaintiff's Exhibits No. 5, No. 6 and No. 7.

THE COURT: Admitted.

(Whereupon Plaintiff's Exhibits Nos. 5, 6 and 7 were received in evidence.)

BY MR. MANN:

Q Mrs. Oehmichen, did you show those newspaper clippings to your husband? A Yes, I did.

Q Was there any noticeable effect on him when he saw them? A Mr. Oehmichen was very indignant. In fact, he was flabbergasted that such untrue statements should be the reason for his incarceration.

Q You characterize those as "untrue statements" Mrs. Oehmichen. Would you be good enough to list for us some of the inaccuracies contained in those press
40 clippings; that is, Plaintiff's Exhibits Nos. 5, 6 and 7? A It is mentioned in one of the exhibits that we owned two airplanes, which was not true. And it was furthermore mentioned Mr. Oehmichen had been a pal of Von Ribbentrop, the German Foreign Minister.

THE COURT: Had been a what? I didn't hear it.

THE WITNESS: A pal, p-a-l, of Von Ribbentrop, the German Foreign Minister; and that Mr. Von Ribbentrop was married to one of the daughters of the Asbach Company, which was not true.

BY MR. MANN:

Q Did you ever own an airplane? Either you or Mr. Oehmichen ever own an airplane at any time in your life? A No.

Q Did you have several automobiles? A No.

Q What kind of an automobile did you have at the time? A We had a 1940 Buick.

Q Was that the only car you had? A Yes.

Q Now, was your husband a friend of Von Ribbentrop? A No.

Q Was your husband an acquaintance of Von Ribbentrop? A No.

41 Q So far as you know, had your husband ever seen Von Ribbentrop? A No.

Q Now, the newspapers state that you did have the agency for Asbach & Co. Did you have the agency for Asbach & Co.? A Yes, we had the agency.

Q Was a member of the Asbach family married to Von Ribbentrop? A No.

Q Mrs. Oehmichen, one of the exhibits, the newspaper clipping, states that you had your offices in the same building as the German Consulate. Is that true? A No. that is not true.

MR. SEARLS: In what city, Mr. Mann?

MR. MANN: German Consulate in New York.

THE WITNESS: No, that is not true.

BY MR. MANN:

Q Mrs. Oehmichen, did you talk to the newspaper people at or about the time that these items appeared in the press? A No.

Q You were not the source of the information? A No.

Q Would you tell us again, after your husband was taken from the East Orange, New Jersey jail,
42 where was he imprisoned? A In Ellis Island.

Q How long did he remain there? A For ten months.

Q When did he leave? A Yes, ten months. In December 1942.

Q Now, while he was at Ellis Island, was he ever given a hearing? A Yes.

Q How long was this after he was arrested before he was given a hearing? A About six weeks.

Q Were you present at the hearing? A No.

* * * * *

Q Do you mean to tell me, Mrs. Oehichen, that you did not testify in your husband's behalf? A I had a separate hearing a few days later.

Q Was this your hearing or his at which you testified? A It was a hearing for Mr. Oehmichen.

Q When was that? A Several days after Mr. Oehmichen's hearing.

43 Q But it was a part of Mr. Oehmichen's hearing? A Yes, apparently.

Q But he was not present at the time? A No, no.

Q Now, did you get any witnesses to appear and testify for Mr. Oehmichen at his hearing? A Yes, I did.

Q Did they appear and testify on the same date that you did? A No.

Q When did these witnesses that you obtained to testify at Mr. Oehmichen's hearing testify relative to the time when you testified? A They testified on still another day.

Q Before or after you did? A Before Mr. Oehmichen, and also before my hearing. I had the last hearing.

Q Do you understand that Mr. Oehmichen's hearing consisted of three different sessions? A Yes.

Q One at which witnesses testified? A Yes.

Q One at which he testified? A Yes.

44 Q And one at which you testified? A Yes.

Q Were these consecutive? A No.

Q On consecutive days? A No.

Q How much time elapsed between the first session and the last, tell us, if you know? A I don't remember that. It may have been four, five days. I believe there was a weekend in between.

Q Was your husband disturbed by the fact that this hearing did not take place consecutively and all at one time? A Yes.

Q What was the result of the hearing? A The result was that Mr. Oehmichen was informed that he would be interned for the duration of the war.

Q When was he told this? When was this result made known to him? A Oh, I think it was sometime in June, May or June. I am not definite.

Q This would be May or June of 1942? A 1942.

Q Mrs. Oehmichen, did you visit your husband when he was interned at Ellis Island at any time other

45 than to appear at his hearing? A Yes.

Q How many times did you see him? A Every week.

Q Could you have gone oftener? A No.

Q Can you describe the conditions at Ellis Isiand, as you saw them? A Well, I did not see the room in which Mr. Oehmichen was. I only saw a visiting room with a wire between the visitors and the people to be visited, and guards standing around.

Q Were the guards armed? A No. I don't think so.

Q You never saw the room in which Mr. Oehmichen was kept? A No.

Q Now, Mrs. Oehmichen, how did your husband bear the effects of the imprisonment? By that, I would like for you to compare him as he appeared to you prior to his arrest on March 2, and then I would like for you to describe him as he appeared to you in late May of 1942. A Mr. Oehmichen had always been at liberty to go and travel where he pleased. He was, himself, an independent businessman. He was a well-liked person. He had great prestige in the community. When Mr. Oehmichen was taken to Ellis Island, the fact that he was not trusted, that something was against him, which he didn't know, had a very deteriorating effect on his morale. He became very thin. He was in tears every time I saw him in Ellis Island, which he never cried—I never saw him cry before. He pleaded with me every time to try everything to get him out of there. He just did not stand the internment at all. He didn't bear up.

46

Q Did he lose weight? A He lost weight.

Q Had he lost weight? A He had lost considerable weight.

Q How many pounds do you think he had lost? A He had lost at least twenty pounds.

THE COURT: What was his age then?

THE WITNESS: Mr. Oehmichen had just become forty.

BY MR. MANN:

Q Now, did your husband ever visit you from Ellis Island? A Yes. With all the excitement and the ostracism that I faced from friends and neighbors, and people who lived in the same apartment building, due to those newspaper reports, and harassing effect of Mr.
47 Oehmichen's pleadings—I traveled to Washington; and I traveled here and there to get him released —I became quite ill; and at that time, Mr. Oehmichen visited me in our home with a guard.

Q Now, at these times when you visited Mr. Oehmichen, or when he visited you, did you ever discuss with him the matter of repatriation to Germany? A Yes.

Q When was this first discussed? A It must have been sometime in April, when Mr. Oehmichen was in Ellis Island; and he called me—he was permitted to call me on the phone, which was not usually the case that people from Ellis Island could telephone; and he told me that there was a chance to get away from Ellis Island by returning to Germany, and would I care to go.

Q What did you tell him? A At that time, I said, no.

Q Did he indicate that he wanted to be repatriated at that time? A He was fascinated by the idea of leaving the camp; but Mr. Oehmichen's sister was visiting with me at the time, that same evening; and we discussed it; and we both thought that he was not free—it was—he was sort of influenced by the internment in his decision.

Q Now, Mrs. Oehmichen, when you had this
48 first discussion concerning repatriation, was that before or after your husband had had the hearing which you have described? A It was after Mr. Oehmichen had had the hearing, but before he was informed that he would be interned.

Q Prior to your husband's internment, had you and your husband ever discussed the possibility of leaving

the United States and going to Germany or elsewhere to make your home? A No, no. We never had any intention to do that.

Q And you never discussed it? A No.

Q Did you desire repatriation at this time, when Mr. Oehmichen mentioned it to you the first time? A No.

MR. MANN: I will ask the Clerk to be good enough to mark that document as Plaintiff's—

THE CLERK: Plaintiff's 8, for identification.

(Whereupon Plaintiff's Exhibit No. 8 was marked for identification.)

BY MR. MANN:

Q Mrs. Oehmichen, I show you Plaintiff's Exhibit No. 8, for identification, and I ask you if that bears your husband's signature? A Yes, it does.

49 Q Mrs. Oehmichen, this document is a petition for repatriation, and it is signed by your husband, as you have testified. He requested repatriation, and I quote, "in the event of my internment." Did he ever discuss with you this document, that is, Plaintiff's Exhibit No. 8? A Yes, we did.

Q Did your husband tell you why he signed this document, Plaintiff's Exhibit No. 8? A Because he wanted to get away from the camp.

MR. SEARLS: Wanted to get away from what?

THE WITNESS: In case he would be interned, didn't want to go to the camp.

BY MR. MANN:

Q Why did he put on the document, "in the event of my internment"? Did he tell you why he did that? A He didn't make a special issue of it. If he would not be interned, there was no point for him to go to Germany. Then he would be free here.

MR. MANN: I offer Plaintiff's Exhibit No. 8 into evidence as Plaintiff's Exhibit No. 8.

THE COURT: Admitted.

(Whereupon Plaintiff's Exhibit No. 8 was received in evidence.)

BY MR. MANN:

Q Mrs. Oehmichen, were you interned after you were released on March 3? Were you subsequently in internment? A I voluntarily joined Mr. Oehmichen's internment.

Q When did you join your husband in internment? A When Mr. Oehmichen was not repatriated, I decided to join his internment.

Q And when was that? A That was in December 1942.

Q Where did you live between the time when you were released on March 3, 1942, and when you joined your husband in internment in December of 1942? A At 175 South Munn Avenue, East Orange, New Jersey.

Q Was this the apartment which you and Mr. Oehmichen had maintained at the time of your arrest? A Yes, that is right.

Q Mrs. Oehmichen, during this period, were you bothered by the fact of your husband's internment? A Yes.

Q Could you describe for us the state of your health during this period? Was it good, or was it bad? A I was very weak. I had become very weak, because of all the excitement connected with Mr. Oehmichen's internment.

Q Then your answer is that the state of your health was bad? A Yes.

Q Now, Mrs. Oehmichen, would you describe your condition to us just as you would describe it to a doctor? A I was very nervous. I was trembling all the time. I had a complex of being hunted all the time. I had no appetite at all, which made me lose considerable weight. And finally, this ended up in a peritonitis.

Q During this period, did you run a fever? A Yes.

Q How high a fever? A 104.

Q Did your arms, your legs shake? A Yes.

Q And you testified that you lost weight? A Yes.

Q Did you have occasion to see a doctor? A Yes.

Q Did he give you a certificate? A Yes.

MR. MANN: I will ask the Clerk to be good enough to mark the certificate of July 21, 1942, of Dr. Ludwig Simon, as Plaintiff's Exhibit for identification No. —

THE CLERK: Nine.

(Whereupon Plaintiff's Exhibit No. 9 was marked for identification.)

52 MR. MANN: And certificate dated August 31, 1942, from Dr. Ludwig Simon as Plaintiff's Exhibit for identification—

THE CLERK: Ten.

(Whereupon Plaintiff's Exhibit No. 10 was marked for identification.)

MR. MANN: Another certificate from Francis Just, M.D., dated September 25, 1942, as Plaintiff's Exhibit for identification.

THE CLERK: Eleven.

(Whereupon Plaintiff's Exhibit No. 11 was marked for identification.)

BY MR. MANN:

Q You say the doctor did give you a certificate? A Yes.

Q At the time, did you request the certificate? A Yes.

Q Did you tell the doctor at the time that you wanted this certificate for any particular purpose? A Yes.

Q And what was that purpose? A To either effect repatriation or get a family camp established.

THE COURT: I didn't get that.

THE WITNESS: To either be repatriated or get the family camp, of which Mr. Lord had told me, es-

53 tablished, so that I could join Mr. Oehmichen.

Q. I show you Plaintiff's Exhibit No. 9, for

identification, and I ask you what it is? A Yes, that is certificate by Dr. Simon.

Q I show you Plaintiff's Exhibit No. 10, for identification, and I ask you to tell me what that is? A That is also a certificate by Dr. Simon.

Q I show you Plaintiff's Exhibit No. 11, for identification, and ask you to tell me what that is? A That is a certificate by Dr. Just.

Q Were all of these certificates given to you at your request? A Yes.

MR. MANN: I would like to offer in evidence as Plaintiff's Exhibits No. 9, No. 10, No. 11 the exhibits for identification bearing the same numbers.

MR. SEARLS: No objection.

THE COURT: Admitted.

(Whereupon Plaintiff's Exhibits Nos. 9, 10 and 11 were received in evidence.)

BY MR. MANN:

Q Mrs. Oehmichen, during the time between your arrest and release and the time that you joined your husband in the internment camp at Crystal City, Texas,
54 did you have occasion to write any letters to agencies or persons in the United States Government, asking for repatriation? A Yes, I did.

Q Did you write several letters? A Yes, I did.

Q Why did you write such letters asking repatriation, Mrs. Oehmichen? A Mr. Oehmichen was—

Q Speak to the Court. A Mr. Oehmichen was pleading so hard to get out of there. The only way to get out was to go back to Germany; and that is why I tried every source and everybody that I could think of to help us so that Mr. Oehmichen would be free.

* * * *

BY MR. MANN:

Q Mrs. Oehmichen, I show you Plaintiff's Exhibit No. 12, for identification, and I ask you to tell me what it is?

A This is a letter to the Department of State by Major Walsh, written by Major Walsh, who was Mr. Oehmichen's lawyer, and signed by Major Walsh and Mr. Oehmichen and myself.

55 Q You saw the letter after it was written? A Yes.

Q And— A Asking assistance.

Q The contents of this letter— A Asking assistance to grant us permission to be repatriated.

MR. MANN: I offer Plaintiff's Exhibit No. 12 for identification into evidence as Plaintiff's Exhibit No. 12.

MR. SEARLS: No objection.

THE COURT: Admitted.

(Whereupon Plaintiff's Exhibit No. 12 was received in evidence.)

• • • •

Q Mrs. Oehmichen, I show you Plaintiff's Exhibit No. 13, for identification, and I ask you to tell me what it is. A This is another letter to the Department of State, signed by myself, dated July 1942.

MR. SEARLS: What is that, the letter of July 26?

MR. MANN: July 26, '42.

• • • •

56 Q Mrs. Oehmichen, you state in this letter, and I read:

"If permission is granted to sail, we, of course, will leave all our property and possessions in this country and after this terrible conflict is over (the Immigration Authorities permitting) we will return to the United States where my husband has business interests and a sister happily married and residing in Chicago."

Did you store your furnishings? A Yes.

MR. MANN: I offer Plaintiff's Exhibit No. 13 for identification as Plaintiff's Exhibit No. 13 in evidence.

MR. SEARLS: No objection.

THE COURT: Admitted.

(Whereupon Plaintiff's Exhibit No. 13 was received in evidence.)

• • • •

Q Mrs. Oehmichen, I show you Plaintiff's Exhibit No. 14, for identification, and ask you if you can tell me what it is? A This was a letter to Mrs. Thompson, the secretary of Mrs. Roosevelt, asking the same thing, to help us.

Q That letter encloses a letter, Mrs. Oehmichen. Will you look at that and tell us what it is? A Well, I had started this letter—

Q First, for the record, tell us what the document enclosed is? A It is my letter which I wrote, and I had become very ill; Mr. Oehmichen was visiting me; and he finished the letter and sent it off.

MR. MANN: With Mr. Searls' permission, in order that the record may be clear, Plaintiff's Exhibit No. 14, for identification, is a letter addressed to Mrs. Malvina C. Thompson, under date of September 2, 1942, enclosing a letter addressed to the "Honorable Franklin D. Roosevelt, President of the United States." The two together are one exhibit for identification.

MR. SEARLS: Are you offering them?

MR. MANN: I haven't offered it yet. I am going to.

BY MR. MANN:

Q Mrs. Oehmichen, in your letter to the President, which is a part of Plaintiff's Exhibit No. 14, for identification, you ask, and I quote:

"I ask you to direct your instructions to the place where they will be most effective for fair play, to either set my husband free, or else, if and when I arise from my sickbed, to let us both go back to Germany and to be reunited and start there life anew once more."

What did you mean by that, Mrs. Oehmichen? A To be free from the internment. To become healthy again. To recuperate from the shock.

Q You state that you would like to "start there life anew once more." What did you mean by that? A Only to recuperate from the shock and—you know, our home had been broken up. We wanted to be together again. And that was what we meant by saying, starting life anew.

Q Did you mean that you were going to remain in Germany? A No.

MR. MANN: I offer Plaintiff's Exhibit No. 14 for identification in evidence.

MR. SEARLS: No objection.

THE COURT: Admitted.

(Whereupon Plaintiff's Exhibit No. 14 was received in evidence.)

* * * *

59 Q Mrs. Oehmichen, I show you Plaintiff's Exhibit No. 15, for identification, and ask you to tell me what it is? A This is a letter, again to the State Department, by myself and finished by Mr. Oehmichen, also requesting repatriation.

* * * *

60 (Whereupon Plaintiff's Exhibit No. 15 was received in evidence.)

MR. SEARLS: Was that Exhibit September 4?

THE CLERK: September 4, 1942.

BY MR. MANN:

Q Mrs. Oehmichen, in each of those exhibits in evidence, that is, Plaintiff's 12, 13, 14 and 15, you asked to be repatriated to Germany, if your husband could not be freed. By requesting repatriation in those letter, or in any one of them, did you intend to request to be returned to Germany permanently? A No. That thought never occurred to us.

MR. SEARLS: I didn't get the last, sir.

THE WITNESS: That thought never occurred to us, that we would be going there for good.

BY MR. MANN:

Q What were you asking, Mrs. Oehmichen? A We were only asking to get away from the camp, from the internment, from the barbed wire for the time of the duration of the war.

* * * *

63 MR. MANN: If Your Honor please, I would like at this time to renew the motion that I made yesterday. That is, the motion that the Government produce the documents that were set out in the notice to produce.

The reasons for my renewing my motion at this time, Your Honor, are two: First, I felt that yesterday, when Your Honor denied the motion, that he did it partly on the ground of relevance. I would like to point out that we have shown at this time that the witness, the Plaintiff, and her husband, were permanent residents of the United States; that they never considered going out of the United States to make their home; and we have shown, I think, that after they were imprisoned, the feeling of injustice prompted the Plaintiff's husband to immediately start his request for repatriation. There was a request
64 for repatriation after the hearing in the event of internment. We feel that the relevancy is now apparent, because this has to do with the state of mind of this man. He felt the injustice that was done to him. He felt that he had done nothing to justify his being imprisoned; and his knowing that, and the feeling of injustice led him to make the request for repatriation.

Secondly, Your Honor, we feel that if this file is produced, that we would be in a position to show the Plaintiff's husband was imprisoned on the basis of erroneous information and false charges.

Now, Your Honor, we are not here contesting the right of the Government to throw this man in jail. But we do say that the Government acted upon erroneous information. Now, the war has been over, Your Honor, for a

long time; and we see no reason that the Government should now claim that we must keep this file confidential.

For those reasons, Your Honor, I renew my motion.

• • • •

THE COURT:

66 • • • But just to grant the motion and throw open all of the matters that are called for, I think, would be error on my part. So I deny the motion.

MR. MANN: Before continuing, Your Honor, may I address the Court to say this one thing. That our purpose in making this request is that we feel that if we had those files, we could show it was just the same sort of stuff that appeared in the newspapers, and that all of it is false.

Whereupon—

ANNI HELENE JOHANNA OEHMICHEN

resumed the stand and testified further as follows:

MR. MANN: Your Honor, may I continue the examination?

THE COURT: Yes, sir.

• • • •

67 BY MR. MANN:

Q Mrs. Oehmichen, in your testimony yesterday, you testified concerning your efforts to determine just why you and your husband had been arrested and imprisoned. Did you ever speak to the Chief of Police in East Orange, New Jersey? A Yes, I did.

• • • •

69 BY MR. MANN:

Q Mrs. Oehmichen, would you tell us again, when did you join your husband in internment? A On December 17.

THE COURT: Let me just add this, before she answer. I have understood her testimony to be that both she and her deceased husband were firmly of the mind

—that is her testimony—that the incarceration was unjustified.

MR. MANN: That is correct, Your Honor.

THE COURT: All right, now she can proceed to answer. Repeat the question.

MR. MANN: Would you read the question, please?

(Whereupon the question and answer were read by the reporter.)

THE WITNESS: 1942.

BY MR. MANN:

Q Where did you join your husband in internment? A In Crystal City, Texas.

Q How long were you in the internment camp at Crystal City, Texas? A Two years.

70 Q Mrs. Oehmichen, would you describe for us the conditions, the living conditions, and the physical appearance of the internment camp at Crystal City, Texas? A The camp was a large compound with very high fence around it. There were watchtowers; and the fence was lit all night. There were bungalows, about thirty bungalows for people with babies; and shelters for other people. Continuously houses were built, because the number of internees increased from month to month.

The shelters were without water or sewer. The bathhouses were about 500 feet away from the shelters. The water had to be carried in pails about a hundred feet from the shelter.

Q Mrs. Oehmichen, you said there was a fence, a wire fence around the camp. What kind of wire? A Barbed wire.

Q You stated there were guards. Were these armed guards? A Yes.

Q Was there any doubt in your mind, Mrs. Oehmichen, while you were in the internment camp at Crystal City that you were in prison? A No.

Q Now, Mrs. Oehmichen, what sort of work were you

given to do, you and your husband given to do in
71 the internment camp at Crystal City? A There was the usual work of taking away the garbage and cleaning the bathhouses and the toilets, which was rotated amongst the men. The women had nothing to do but keep house and cook.

Q Was there any work that was assigned for one to while away his time? A Yes.

Q What was that? A The carpenters, tradesmen, people who were handy in menial labor could work in building the houses for future internees. They could cook in the kitchen. The butchers could make sausage. People who had been salesmen could sell in the store; and they were being paid by the authorities for this service.

Q How much were they paid? A Ten cents an hour.

Q Mrs. Oehmichen, what work was assigned to your husband to do in this camp to while away the time, in addition to the routine duties of cleaning the latrines, and such, which you mentioned? A This work was not assigned. The work I just talked about was voluntary.

Q Did your husband apply for voluntary work?
72 A Yes.

Q What was he told? A Mr. Collear assigned Mr. Oehmichen to build up the school.

• • • •

BY MR. MANN:

Q And did Mr. Oehmichen teach in the school? A Yes, he did.

Q Did you teach in the school? A Yes, I did.

Q Now, Mrs. Oehmichen, how did you and Mr. Oehmichen get along with the other internees in the internment camp there? First, how many internees were there there? A The final number of internees was about 2,000 Germans.

Q Were there others than German? A Yes, there were about 2,000 Japanese.

Q Making a total of about 5,000? A Five thousand, 3,000 Japanese.

Q How did you get along with these other internees? A Quite a few of the Germans that were internees were Nazis; had been former members of the Bund; and they exerted an iron rule over the camp. The authorities were not in all cases aware of this undercurrent. There were quite a few restrictions by the Nazis. They fought everybody who was against many things they had put on the internees. They accosted Mr. Oehmichen because he was outspoken against their rule. First they threatened him he should be hung. Then one person threw a big stone at him; and until, finally, he was accosted, assaulted.

73

Q He was physically attacked? A He was physically attacked. His glasses were broken. His shirt was torn. The same thing happened to other people who had been outspoken against the Nazi rule in the camp.

Q Who were the people who caused the physical violence to Mr. Oehmichen? A They were ardent Nazis.

Q The ardent Nazi group in the camp? A Yes.

Q How did you make out, Mrs. Oehmichen? How did you get along with the other internees in the camp? A I was ostracized. There was a cooking class in which I enrolled, and when the wife of the speaker found out that I had enrolled, she withdrew from that cooking class. We were known in the whole camp, and every new arrival in the camp was informed about us, that we were the so-called free Germans. The children in the school were told not to greet us any more.

74

Q Now, Mrs. Oehmichen, you testified that on the voluntary work, to while away the time, you and your husband were permitted to teach in the school. Did you teach in the school all the time you remained in the internment camp in Crystal City? A No. After some teachers had come from South America, who were Na-

tional Socialistic teachers, they found Mr. Oehmichen had taught the children about Einstein, and people like that, and they felt we were not the right people to teach; and there were conversations and meetings about this; and Mr. Oehmichen was made to resign from the school.

Q Who forced him to resign, Mrs. Oehmichen? A Those people.

Q What do you mean by, "those people"? A The teachers that had come from Costa Rica.

Q Would you classify them with the Nazi group in the camp or the Free German group? A No, the Nazi group.

Q Why was it so objectionable, Mrs. Oehmichen, that you and your husband should teach about Einstein? A It was not objectionable to us, but they felt Mr. Oehmichen should not have told the children about
75 Jewish genius.

Q Now, Mrs. Oehmichen, when you and your husband were separated, you have testified that your husband requested repatriation and that you wrote to several agencies of the Government requesting repatriation. After you joined your husband in the Crystal City internment camp, did you still want to be repatriated? A Whenever the issue of repatriation came up, we wanted to be repatriated, because the door was held open, and then Mr. Oehmichen wanted to go.

* * * *

Q Could you tell me what Plaintiff's Exhibit No. 16 is? A That is request for repatriation.

Q Mrs. Oehmichen, I show you Plaintiff's Ex-
76 hibit No. 17, for identification, and I ask you if that bears your husband's signature? A Yes; and that also is a request for repatriation.

Q When was this request for repatriation signed? A On January 22, 1944.

Q And at that time, you had been in the camp since December of 1942; is that correct? A That is right.

MR. MANN: I offer in evidence Plaintiff's Exhibits No. 16 and No. 17.

MR. SEARLS: No objection.

THE COURT: Admitted.

(Whereupon Plaintiff's Exhibits Nos. 16 and 17 were received in evidence.)

BY MR. MANN:

Q Mrs. Oehmichen, in both Plaintiff's Exhibit No. 16 and Plaintiff's Exhibit No. 17, the request for repatriation reads:

"I do desire repatriation to Germany, if possible, during the war. Otherwise, do not."

What is meant by that? A Well, when the war was over, there would be no point being repatriated. We would be free, and we didn't have to go to Germany.

Q At the time you executed those requests for
77 repatriation, had you been kicked out of the school?
A Yes.

Q Had you suffered at the hands of the Nazi groups along the lines that you have described? A Yes.

Q That had happened before you executed these requests? A That happened.

Q Now, Mrs. Oehmichen, did you and Mr. Oehmichen make other requests to get yourselves repatriated? A Yes.

Q Do you remember what those efforts were? A Mr. Oehmichen sent a wire to Mr. Kelly, I think, and to Mr. Lord, United States Attorney.

• • • •

BY MR. MANN:

Q Mrs. Oehmichen, I show you Plaintiff's Exhibit No. 18, for identification, and ask you to tell me what it is? A This is a telegram to the United States Attorney, Thorn Lord, in Trenton, asking him to exert his influence so that we would be repatriated.

Q Do you remember when that was sent? A
78 Yes.

Q When was that? A That was sent on Feb ruary 9—must have been 1943.

MR. SEARLS: What year?

THE WITNESS: 1943, it must have been.

MR. SEARLS: Forty-three?

THE WITNESS: Forty-four. It must have been 1944, because '43, we were only there a month.

* * * *

Q I show you Plaintiff's Exhibit No. 19, for identification, and ask you to tell me what it is? A That is a telegram to Mr. Enis, dated February 9, 1944, asking him to help us.

Q It is a telegram which you sent? A Ye.

Q What is the date of it? A February 9, 1944.

Q Does 1944 show on the telegram? A Yes.

Q Was that sent at the same time as Plaintiff's Exhibit No. 18? A. That is right.

Q Could you identify Mr. Enis for us? A Mr. Enis was the Director of Alien Control in the Depart-
79 ment of Justice at the time.

MR. MANN: I offer in evidence Plaintiff's Exhibits No. 18 for identification and No. 19 for identification as No. 18 and No. 19.

MR. SEARLS: No objection, Your Honor.

THE COURT: Admitted.

(Whereupon Plaintiff's Exhibits Nos. 18 and 19 were received in evidence.)

* * * *

BY MR. MANN:

Q Mrs. Oehmichen, I show you Plaintiff's Exhibit No. 20, for identification, and I ask you if that bears your husband's signature? A Yes, it bears Mr. Oehmichen's signature.

Q What is that document? A This is an application for a parole. It is a form for application for a parole.

Q But does that document request parole or say that parole would not be accepted? A It says parole would not be accepted.

* * * *

80 (Whereupon Plaintiff's Exhibit No. 20 was received in evidence.)

BY MR. MANN:

Q Now, why did Mr. Oehmichen execute that document? Tell us, if you know. A We felt that parole was like for any ordinary criminal. Mr. Oehmichen would have to report to a parole officer. And Mr. Oehmichen did not want to be in a waiting room with a criminal who might knock him on the shoulder and say: Buddy, how long have you been in? And that was the objection of Mr. Oehmichen to be released on parole. He did not feel he had done anything he needed to be paroled for.

Q What do you mean when you say he didn't feel? A He wanted to be released without any ties attached to it. I mean, parole meant that he was paroled of some guilt, which he did not feel he had. There was no guilt.

Q Am I correct in saying that he felt by applying for parole, it was acknowledgment of guilt? A That is right.

Q And he felt he would be treated as any other criminal? A Any ordinary criminal.

Q Now, did you share that feeling, Mrs. Oeh-
81 michen? A At the time, yes.

Q Did that continue to be the feeling of you and Mr. Oehmichen until the time you were sent back to Austria? A No, sir.

Q Mrs. Oehmichen, when did you change your opinion about parole? A I was permitted by the camp authorities to go to the wedding of my niece in Chicago in October 1944; and I spoke to people who had been out on parole; and they told me it was not at all like we

expected. The parole officer was an entirely different person; he had nothing to do with criminals. He was friendly. In fact, they had invited him, and they called each other by their first name. It was an entirely different matter.

Q Were you able to disabuse yourself of the idea that asking for parole was a confession of guilt? A Yes.

Q And how did you do that? A When I went back to the camp, I talked to Mr. Oehmichen.

Q When you were in Chicago, did you write Mr. Oehmichen a letter? A Yes, I did write him about it, too.

MR. MANN: Will you mark this.

THE CLERK: Plaintiff's 21, for identification.

* * * *

82 Q I show you Plaintiff's Exhibit No. 21, for identification and ask you if that is the letter? A This is the letter.

Q Is that a letter in your handwriting, signed by you? A Yes.

Q Mrs. Oehmichen, I would like to read to you from Plaintiff's Exhibit for identification No. 21, which you have identified as a letter addressed to your husband. You state:

"What you write about repatriation is interesting, but I do not believe it. I think one should not make any decision about that when one is not free to use his own judgment. After having been interned for such a long time, we certainly have a bit of the barbed wire sickness, and see things in a distorted way. What I am worried about more is your long internment and the possible mental consequences about which Kobbe is so worried. But we will discuss all this when I am back."

Now, what is this mental condition that you referred to here, Mrs. Oehmichen? A It was—

83 Q "Mental consequences," excuse me. A There was a strain of melancholy in Mr. Oehmichen's

family. The two brothers of his mother had committed suicide at the age of forty-five, although they were in very fine circumstances. Mr. Oehmichen's mother had passed away when she was quite young of degeneration of the kidneys. His grandmother passed away of the same illness. And this degeneration of the very fine blood vessels which leads to that was in the family, was evident in the family. We did not know about it at the time; but Mr. Oehmichen's sister discussed this with me when I was in Chicago.

Q Now, you say, "But we will discuss all this when I am back." A Yes.

Q Did you discuss that condition and the question of repatriation with your husband when you returned to Crystal City? A Yes, I did.

MR. MANN: I offer Plaintiff's Exhibit No. 21 in evidence as Plaintiff's Exhibit No. 21.

MR. SEARLS: No objection.

THE COURT: Admitted.

(Whereupon Plaintiff's Exhibit No. 21 was received in evidence.)

BY MR. MANN:

Q Now, what was the result of those discussions that you and your husband had concerning repatriation and parole? A We made a plea to Mr. Ennis and to Mr. Lord.

Q Let me stop you there and ask you this. Did you succeed in convincing your husband that his attitude towards parole was wrong? A Yes, I did.

Q And after you convinced him of that, what did you do? A I wrote a letter to Mr. Ennis and to Mr. Lord, asking him to give us another hearing and to review the case.

* * * *

Q Mrs. Oehmichen, I show you Plaintiff's Exhibit No. 22 for identification, and ask you to tell me what it is?

A This is my letter to Mr. Ennis, dated October 24, 1944. This is the letter I talked about.

Q The letter to which you referred? A That is right.

Q And what do you request in this letter, Mrs. Oehmichen? A I requested another hearing.

Q Did you request parole? A Yes.

85 Q Mrs. Oehmichen, I show you Plaintiff's Exhibit No. 23, for identification, and ask you to tell me what it is? A This is my letter to Mr. O'Rourke, the commander of the camp, asking him to send off the other two letters.

MR. MANN: I would like to offer in evidence Plaintiff's Exhibit No. 22 for identification as Plaintiff's Exhibit No. 22 in evidence; and Plaintiff's Exhibit No. 23 for identification as Plaintiff's Exhibit No. 23 in evidence.

MR. SEARLS: May I see those for a moment? I just want to make sure I got the numbers straight. All right. No objection.

THE COURT: Admitted.

(Whereupon Plaintiff's Exhibits Nos. 22 and 23 were received in evidence.)

BY MR. MANN:

Q Did you ever receive a reply from Mr. Ennis to your letter in which you asked for parole? A Yes.

Q I show you Plaintiff's Exhibit No. 24, for identification, and ask you if that is his reply? A It is.

Q Would you read that, please? A "Reference is made to your letter of October 24, 1944, concern-

86 cerning the case of your husband, Mr. Erhard Max Oehmichen.

"I wish to advise you that no change will be made in your husband's internment status at this time. However, your letter will be made a part of his file for consideration in the event that his case is reexamined at a later date."

MR. MANN: I offer in evidence as Plaintiff's Exhibit No. 24 in evidence, Plaintiff's Exhibit No. 24 for identification.

MR. SEARLS: No objection, Your Honor.

THE COURT: Admitted.

(Whereupon Plaintiff's Exhibit No. 24 was received in evidence.)

BY MR. MANN:

Q Now, Mrs. Oehmichen, at the time of this correspondence between you and Mr. Ennis, and the period thereabouts, what was the attitude of Mr. Oehmichen toward you? A Well, after I had returned from Chicago, Mr. Oehmichen was very envious of my trip. He felt very much that he should have gone, too; but the only one to go was I. When I came back, he didn't talk to me for hours; didn't inquire about the trip at all. He was very upset that I should have been able to go and he stayed back.

Q Now, did he normally act like that towards you? Did he act that way before he was put in the internment camp? A No. Before he was put in the camp,
87 he was a very nice person, very friendly. Since he was in the camp, Mr. Oehmichen was very irrational. One day he would admire some embroidery I had done; the next day it was the most foolish thing I could have done. He was not himself.

Q In addition to these periods when he wouldn't talk to you, was he cross and irritable in so far as you were concerned? A Yes, very cross. He was envious of everybody. He was envious of Mr. O'Rourke, that he could drive in and out of the gate in a beautiful car. He was envious of Mr. Efferd that he could go to Mexico. He was envious of everybody who could go through the gate.

Q Now, as you observed Mr. Oehmichen's conduct during this period, would you say that that was normal conduct for him before he entered the internment camp? A No, no.

Q Mrs. Oehmichen, at this period, did Mr. Oehmichen have periods of depression? A Yes.

Q Did he know that members of his family had committed suicide? A He knew that, but at that time, he didn't think about it.

Q In all this time, in November of 1944, would
88 you say that Mr. Oehmichen was rational or irrational?

. . . . .

THE WITNESS: Mr. Oehmichen was irrational at the time.

MR. SEARLS: I didn't get the answer.

THE WITNESS: Irrational.

BY MR. MANN:

Q Was he irrational at all times or just part of the time? A Just part of the time.

Q Mrs. Oehmichen, were you and your husband eventually returned to Europe? A Yes.

Q When did you leave the Crystal City internment camp? A The first days of January, 1945.

Q When did you learn that you were going to be returned? A On Christmas Day, December 25, 1944.

Q Mrs. Oehmichen, at this time, did you have
89 some possessions in the United States? A Yes.

Q What were some of them? A My complete household furniture, which I had in storage in East Orange; my car, our car.

Q Did you have a refrigerator? A Yes.

Q Did you have a washing machine? A Yes.

Q Did you have radios? A Yes.

Q Other electrical appliances? A Yes.

Q Now, what disposition did you make of those effects? A We left all that in storage.

Q When did you store these effects? A I stored these effects when I went to Crystal City, when I gave up my apartment.

. . . . .

Q Mrs. Oehmichen, I show you Plaintiff's Exhibit No. 25, for identification, and ask you if you can tell me what it is? A This is the receipt of the warehouse of the household effects, describing the various items that we put in storage.

Q Mrs. Oehmichen, was that receipt given to you? A Yes.

Q When did you put your household items in storage, Mrs. Oehmichen? A When I gave up my apartment. It must have been October 1942.

MR. MANN: I offer into evidence Plaintiff's Exhibit No. 25 for identification as Plaintiff's Exhibit in evidence No. 25.

MR. SEARLS: No objection.

THE COURT: Admitted.

(Whereupon Plaintiff's Exhibit No. 25 was received in evidence.)

BY MR. MANN:

Q Now, you put your household furnishings into storage when you gave up your apartment to go to Crystal City. What did you do with your automobile? A I stored it with some friends of mine.

Q Now, Mrs. Oehmichen, when you were told that you were going to be sent to Europe, did you have some personal effects with you there in the camp at Crystal City? A Yes.

Q Did you take everything with you? A No. We put some of the things in storage, again. We sent them to the warehouse.

Q Now, why did you do that, Mrs. Oehmichen? A Some of the things we could not take along, such as movie projector and our films; and other things, we didn't feel we needed that with us, a toaster, and various things like that, which we wanted to keep here.

Q Why didn't you sell these things, Mrs. Oehmichen? A We didn't feel like selling them. They were ours. We just wanted to keep them.

Q Why did you put them in storage and want to keep them? A Because we had all our other things there, and these things belonged to our household, and we wanted to keep it all together.

Q Why didn't you sell the other things that you had in storage? A We wanted to use them again.

Q But you were going to Germany. A Well, we were only going temporarily. We didn't plan to
92 go there for good.

Q Now, Mrs. Oehmichen, between the time that you put your refrigerator and your car and your electrical appliances in storage back in East Orange, New Jersey, and the time that you left to be repatriated, did you have any occasions on which you could have sold your furniture? A Yes.

Q Or your appliances or your car? A Yes, we could have.

Q And why didn't you sell them? A We wanted to use them again.

Q Couldn't you have gotten a price that was pretty good in those days? A Yes. In those days anything, refrigerators, washing machines, a car were sold at premium prices; but we did not want to sell them.

Q Mrs. Oehmichen, when did you and Mr. Oehmichen leave the United States? A I believe it was January 5, the sailing of the Gripsholm.

Q When you and your husband left the United States, Mrs. Oehmichen, did you intend to abandon your American residence? A No.

93 Q Now, Mrs. Oehmichen, what was the final destination of your journey? A The final destination was Bregenz, Austria.

Q When did you arrive there, Mrs. Oehmichen? A The latter part of January. It must have been January 29 or 30.

* * * *

Q Mrs. Oehmichen, why did you want to leave the United States on January 6, 1945? A Well, we had

applied for repatriation; we were on the list; Mr. Ennis did not want to review our case at that time. Mr. Oehmichen had shown illness. He had a very high blood pressure at that time. I felt we should not
94 wait one minute; we should go. And the war could have lasted another year. We didn't know that.

Q You didn't know how long the war would last? A No.

Q Mrs. Oehmichen, you testified that your final destination in Europe was Bregenz, Austria. When you arrived there, where did you live? A We lived with a private family.

Q Who was this private family? A Was a family by the name of Zwiezele.

Q How did you happen to live with this private family? A We chose billets. All the various billets were in envelopes, and all the people on the train had to draw an envelope; and the address where they stayed was in that envelope. Some people stayed in hotels; other people were billeted with private families.

Q Now, how long did you stay there with this private family? A About a month and a half. But—yes, about a month and a half.

Q Then where did you live? A Then we rented a little chalet in the mountains.

Q Was this chalet near Bregenz? A Yes, yes.
95 Q Now, during the time that you lived with this private family and the time that you lived in this private chalet—incidentally, what is a "chalet"? A It is a little Swiss-type farm house.

Q It is a farm house? A Yes.

Q During the time that you lived with the private family and in the Chalet, did either you or Mr. Oehmichen seek employment or seek to engage in business in any way? A No.

Q While you were in Bregenz, Mrs. Oehmichen, did there come a time when Mr. Oehmichen was arrested? A Yes.

Q When was that? A On April 25.

Q Of what year? A 1945.

Q Who arrested him, Mrs. Oehmichen? A The Gestapo.

Q Would you tell us, please, if you know, what was the Gestapo? A Well, it was the secret state police. That is the translation of the word.

Q Secret state police. That is the German?

96 A That was a police put over the regular police by the Nazi Party.

Q Describe the circumstances of the arrest. A Well, two officers came to see Mr. Oehmichen and Mr. Oehmichen was not there. So I told them that he was in town; and they made very little of it. They didn't tell me that they were going to arrest Mr. Oehmichen. They just passed by the telephone and they said: Oh, you have a telephone up here. If we had known that, we would have telephoned. And they asked when Mr. Oehmichen would return; and I told them such-and-such a time; and then they said: Well, please ask him to get in touch with us. And I said: Where is your office? Where are you? And they said: Our offices are next to the Hotel Wiesses Greuz. I did not know at that time that next to that hotel was the office of the Gestapo. So I said: Yes. And they left. And then in the afternoon, a police officer came and he had a warrant for Mr. Oehmichen's arrest. We did not get it in the beginning. Mr. Oehmichen said to him: Well, I will be down town anyway this afternoon. And the man fumbled with this thing, and he said: Well, I have to go with you. Then Mr. Oehmichen said: Well, yes, I told you I will be down town. Then he finally said: No. Well, in other words, I have to arrest you. And that was it.

Q When Mr. Oehmichen was arrested, was he

97 taken then to prison? A Yes.

Q Did you accompany him to the prison? A Yes, I went down with him, because I didn't know

Bregenz. I didn't even know where the prison was; and I wanted to know where they put him.

Q Were you present when he entered the prison and was booked? A Yes. They let me go until the desk where he was booked.

Q And did the booking officer ask him some questions? A He asked him his name.

Q Did either you or Mr. Oehmichen ask the booking officer why he was arrested? A Yes.

Q And what did the booking officer say? A He was arrested by order of the Gestapo.

Q Did you ever find out why Mr. Oehmichen was arrested? A I saw the kreisleiter the next day; and he told me there were testimonies by people who had come with us from the camp who had admitted, who had said that Mr. Oehmichen was anti-National Socialistic; and he had also testimonies from people who had come on a previous repatriation, and they had said the same thing.

98 And then he said: Mr. Oehmichen was not a German. He was an American. And I said: No, Mr. Oehmichen is not an American yet. Yes, he has taken out his first papers, and he is an American.

Q How long did Mr. Oehmichen stay in prison? A Six days.

Q When was he freed? A When the First French Army came to Bregenz.

Q Did you see your husband immediately after he was freed? A Not immediately. He had to walk up the mountain; but right then, I saw him, yes.

Q Now, at the time he was freed, what was the political condition in Bregenz? A Bregenz was in turmoil. The French Army was approaching; the Nazis were fleeing; the town was bombarded.

Q When you saw your husband, did he tell you how he was freed? A Yes.

Q What did he say? A The warden of the prison had gotten the political prisoners together, and he ad-

dressed them, and said: Gentlemen, the power that has detained you here has fled the city. We have no reason to keep you any longer. Go home as quickly as you can. And the political prisoners were released.

99 Q The political prisoners were released? A Yes.

Q Now, Mrs. Oehmichen, at the time of his arrest, or subsequent thereto, was your husband ever given a certificate attesting to the fact that he had been in prison, and showing the reasons for his imprisonment? A Yes.

* * * * *

Q Mrs. Oehmichen, I show you Plaintiff's Exhibit No. 26, for identification, and ask you if that was the certificate to which you referred? A This is the certificate.

MR. MANN: I offer Plaintiff's Exhibit No. 26 for identification in evidence as Plaintiff's Exhibit No. 26, together with the sworn translation.

* * * * *

100 (Whereupon Plaintiff's Exhibit No. 26 was received in evidence.)

BY MR. MANN:

Q After Mr. Oehmichen's release from prison, did you continue to live in Bregenz? A Yes, we did.

Q When did you leave? A We left in October 1945.

Q Then where did you go? A We went to a little resort place in the Bavarian Mountains.

Q Now, at any time during your stay in Bergenz, did you or Mr. Oehmichen engage in business or seek to engage in business in any way? A No.

Q Why didn't you? A We didn't come to Germany to go into business. We wanted to recuperate. We had no intention of establishing any business there.

101 Q Please state the places where you and Mr. Oehmichen lived from the time you left Bregenz until the time of his death? A Oberstauffen, Bavaria, Hamburg, and Weisbaden, Mr. Oehmichen passed away.

Q At Weisbaden? A Yes.

Q When was this? A On May 19, 1948.

Q Now, at any time prior to his death, did Mr. Oehmichen have any employment? A Yes.

Q And what was that? A Mr. Oehmichen was commissioned by the Military Government in Weisbaden and the Ministry of Economics to build an export show in which could be shown what Germany could produce again.

Q Who appointed him to that job? A Colonel Sisson.

• • • •

102 Q Mrs. Oehmichen, I show you Plaintiff's Exhibit No. 27, for identification, and ask you if you have seen that letter before? A Yes, I have. This is a letter by Colonel Sisson about Mr. Oehmichen's activity.

Q Is this the same Colonel Sisson who appointed him to the job? A Yes.

• • • •

104 (Whereupon Plaintiff's Exhibit No. 27 was received in evidence.)

BY MR. MANN:

Q Mrs. Oehmichen, I show you Plaintiff's Exhibit No. 28, for identification, and ask you if you have seen that letter before? A Yes, I have seen that letter.

Q Could you tell me what it is? A This is a letter by Colonel Mandell, who was Chief of Trade and Commerce Department in Military Government.

Q Is that a letter addressed to your husband? A Yes.

Q Was it received by him in his lifetime? A That is right.

• • • •

106 (Whereupon Plaintiff's Exhibit No. 28 was received in evidence.)

BY MR. MANN:

Q Mrs. Oehmichen, you have testified that up to the time of your husband's death that neither you nor he attempted to engage in business in Germany. Tell me, did Mr. Oehmichen have offers at any time to engage in business in Germany? A Yes, he did.

Q Were you present and did you hear the offers? A I was not present, but Mr. Oehmichen came home and told me about these offers.

* * * * *

107 Q Mrs. Oehmichen, when did Mr. Oehmichen die? A On May 19, 1948.

Q What caused his death? A Mr. Oehmichen passed away of high blood pressure, which had led to the degeneration of the capillaries, which are the very fine blood vessels, and they feed various organs; and in this case, the capillaries leading to the kidneys seemed to be the weakest part, and consequently, his kidneys degenerated and led to uremia; and he passed away of that.

Q When was he first treated for this illness? A The high blood pressure was found in the camp in Crystal City. And also the insufficiency, that there was a slight insufficiency of the kidneys, that was found in the camp.

Q The illness from which he died was first noticed in the internment camp in Crystal City? A Yes.

Q Mrs. Oehmichen, after the end of the war, did you or Mr. Oehmichen make any attempts to return to the United States? A Yes.

108 Q What did you do? A We wrote letters in July 1945 to Mr. Collear, who had been our first officer in charge, and to our relatives in Chicago; sent those letters via Switzerland.

Q Did you go to the American authorities? A Yes; we also went to the American authorities. The minute the American Consulate was established in Hamburg, we went there.

Q When was the American Consulate reestablished in Hamburg, in so far as you know? A Sometime in December of 1945.

Q Had you done anything prior to that time? A Yes. July 1945 we wrote those letters.

* * * *

Q Mrs. Oehmichen, I show you Plaintiff's Exhibit No. 29, for identification, and I ask you to tell me what it is? A This is a letter to Mr. Oehmichen's sister and his brother-in-law, dated August 21, 1945, asking them to see—yes—asking them to do whatever they can for our return, to get a reentry permit.

• • • • •

112 (Whereupon Plaintiff's Exhibit No. 29 was received in evidence.)

• • • • •

Q I show you Plaintiff's Exhibit No. 30, for identification, and ask you if you can tell me what it is? A This is a letter to Rosemarie, who was Mr. Oehmichen's niece.

Q Who wrote the letter? A I wrote it. Mr. Oehmichen dictated it to me.

Q That is a letter Mr. Oehmichen dictated to
113 you? A Yes.

• • • • •

Q To whom is this letter addressed? A To his niece, daughter of Mrs. Rietel, giving her instructions on whom to call in Philadelphia, whom to see, Mr. Kelly, Mr. Collear, what to do about our return.

Q Is that the original of the letter that was written? A This is the copy of the original.

Q Where is the original of that letter? A I made an effort to get it, but it, apparently, was destroyed.

Q You made an effort to obtain the original of that letter and you were unable to obtain it? A Yes.

• • • • •

(Whereupon Plaintiff's Exhibit No. 30 was received in evidence.)

• • • • •

Q Mrs. Oehmichen, I show you Plaintiff's Exhibit No. 31, for identification, and I ask you to tell me what it is?

A This is a letter of myself, daged July 5, 1946 to Mr. Oehmichen's sister and her husband and their daughter.

• • • •

115 Q Who is, "Anita"? A That is the daughter. The second daughter or Mr. and Mrs. Rietel.

Q In that letter, you state:

"What you write about Philadelphia is very discouraging."

Could you explain that statement? A My niece had gone to see Mr. Collear and Mr. Kelly, and they both had told her that we would have to apply for immigration anew, rather than get a reentry permit. And at that time, no visas were issued for Germans by the American Consulate in Germany; and we were very disappointed.

• • • •

119 (Whereupon Plaintiff's Exhibit No. 31 was received in evidence:)

• • • •

Q Mrs. Oehmichen, you testified that prior to joining your husband in the Crystal City internment camp, you stored your household belongings. What did you do with the furnishings in the business which your husband
120 had conducted? A I rented a room in the office building where we had had our office, and I stored everything in there.

Q Did you disturb those objects when you were put on the boat to go to Europe? A No.

Q Now, Mrs. Oehmichen, after you were in Europe, and prior to your return to the United States, did you ever have an opportunity to sell your automobile? A Yes.

Q Did you ever have an opportunity to sell certain of your household appliances in storage? A Yes.

Q Did you sell them? A No.

Q Why didn't you sell them? A We wanted to use them again.

Q When did you finally obtain your visa to return to the United States? A In October 1948.

Q Did you obtain that in Germany? A In Switzerland.

Q Why did you obtain it in Switzerland? A At that time visas for German Nationals were not issued at
121 the Consulate in Germany. So I had to go to Switzerland and apply for the visa.

Q What kind of a visa did you obtain? A An immigration visa.

Q When, following the war, did you enter the United States? A On February 19, 1949.

Q On what kind of a visa did you enter? A Imigration visa.

Q What are you presently doing in the United States? A I have reestablished Mr. Oehmichen's business.

Q Do you have the same agencies? A Yes.

Q Or some of them, which you and Mr. Oehmichen had prior to the internment at Crystal City? A Yes.

Q Mrs. Oehmichen, when did you claim the property which was stored prior to your internment in Crystal City? A When I had found suitable living quarters in Englewood, New Jersey, around the middle of April, 1949.

Q When did you reclaim the automobile which you had stored? A Right away after my return.

Q When did you reclaim the business furnish-
122 ings which you had stored? A I kept the business furnishings—I kept that room until December 1949.

Q Mrs. Oehmichen, when did you first know that your property and your husband's property had been seized by the American Government? A When I went back to Newark after my return from Germany.

Q This was after your return in 1949? A Yes.

Q And you then for the first time found out that your property had been seized? A Yes.

Q At that time, had all of the property which you owned or claimed, and which was described in Plaintiff's Exhibits 1, 2 and 3, the vesting orders which I showed

you—had all of that property been vested at that time? A Not all of it. Some of it was vested in 1950, and 1951; but in the one exhibit, all the property that belonged to us was vested.

Q But some of the property was vested after you had returned to the United States? A Yes.

Q In 1950? A Yes.

123 Q And 1951? A Yes.

Q Mrs. Oehmichen, are you an American citizen? A Yes.

* * * *

THE COURT: What about the storage charges during that interim?

THE WITNESS: I had left money with Mr. Oehmichen's sister to pay for that.

* * * *

CROSS EXAMINATION

BY MR. SEARLS:

* * * * *

124 Q Now, you testified that your husband was a member of the Deutscher Verein. A Yes.

Q You said that was a social club in New York? A Yes.

Q Wasn't it a club for people of German descent? A More or less.

* * * *

125 Q How many telephone calls did you get from your husband when he was at Ellis Island? A Oh, one or two, maybe three.

Q Now, you testified, I believe, yesterday about that one call? A One call, I testified about.

Q And that at that time, when he brought up this
126 subject of repatriation, you said, no? A I said, no, yes, as to repatriation. That is right.

Q And didn't your husband tell you at that time that if he went back to Germany, you could go to some place in

the mountains and not bother about anything until the war was over? A Yes.

• • • •

Q Now, at the time he said that in 1942, you didn't know and he didn't know, did you, how long the war was going to last? A No.

Q Is it fair to say that his idea, as you understood it, was that you two should find some place in Europe where you could, as it were, sit out the war? A Yes.

• • • •

127 Q Mrs. Oehmichen, I show you a letter addressed to, "Dear Dr. Fehr," dated May 29, 1943, and bearing your husband's name at the end. Was that a letter that he sent? A I have not seen it yet.

128 Q You mean you haven't seen that letter before? A But since it has his name there—I did not write it.

Q No; but I say, did I understand you to say that you have not seen that? A I have not seen it, no.

Q Not before? Mrs. Oehmichen, I call your attention to your testimony before the Hearing Examiner of the Department of Justice in 1952. This is on Page 144 and page 145. At the bottom of the page, your counsel, Mr. Pehle, asked you, referring to this letter:

"Mrs. Oehmichen, is it fair to say that you have no question to say that this is a true copy of the letter?"

And your answer was:

"Yes."

Did you not see that letter and identify it at that hearing? A I will have to read it again. I may have forgotten about it. If I said it at the time, I will say, I saw it. This letter is translated, you know, by somebody else.

Q Yes. The one sentence in this letter reads:

"I wish you would try every means to this effect, and establish communication by telephone with Mr. Tannen-

berg in order to effect exchange with the next opportunity."

129 Who is Mr. Tannenberg, if you know? A Mr. Tannenberg had been a commercial attache, or whatever you might call it, at the German Consulate in Chicago. He was a commercial consul; and later on, he was transferred also to the Economic Department of the German Embassy in Washington.

Q He wasn't in the United States at this time, was he, or was he? A No, he was in Germany.

Q And who was Dr. Fehr, to whom this letter was addressed? A Dr. Fehr was the head of the department for German interests at the Swiss Legation. At that time, the Swiss Legation was the neutral power who had contracted all the deals between Germany and the United States; and they effected the repatriation. And Dr. Fehr was the head of the German department, if I may say so, in the Swiss Embassy.

Q So what your husband was asking here was that this official of the Swiss Legation should telephone this German official and try to get his name included on a repatriation list? A Yes, yes.

Q Did your husband know Mr. Tannenberg personally? A Yes, he knew him personally from Chicago.

130 Q From the days when you lived and did business in Chicago? A Yes.

Q Now, in the next paragraph, the letter says:

"We, being German businessmen in North America, and furthermore, the Casino of Nations financed by me, and because of representation of German products in the New York World Fair was held universally as the official German exposition place . . . "

Was it held or considered to be the official German place at the Exposition? A It was not; but there were rumors that the Casino was the official German exposition place. Actually, it was not. Mr. Oehmichen had financed this project, with some French banking concern, and Ger-

man breweries; and the total investment was lost because of these rumors.

Q Your husband is saying in this letter here that it was so held. A It was held. I don't know who translated it, Mr. Searls. This is a very odd translation.

Q Do you know that in November of 1944, Mrs. Oehmichen, your husband's name was on a list supplied to the Swiss officials by the German government of peo-
131 ple whom they wished to have repatriated? A I didn't know that. I heard that later, but—

Q When did you hear it? A I think at the hearing in Washington. In that hearing, I think I was informed about it.

Q You say you didn't hear about that before the hearing? A No.

Q Now, this hearing that we have mentioned, Mrs. Oehmichen, was a hearing held in the Department of Justice; was it not? A Yes.

Q And you testified there? A Yes.

Q Under oath? A Yes.

Q And you were represented by counsel? A Yes.

Q By a lawyer? A Yes.

Q Now, to go on to the period when you were at Crystal City, except for the heat, the living conditions at Crystal City were fairly comfortable; were they not? A Well, if you compare it with a little hunting shack you have somewhere, yes; but, permanently, they were not. However, we would have put up with that, if we wouldn't
132 have had the Nazi pressure in the camp.

Q That is, you and your husband at Crystal City had, first, one-half of a cottage with another couple? A Yes.

Q And then later on, you had a place to yourselves? A Yes.

Q The food supply at Crystal City was very good and very adequate; was it not? A Yes, very, definitely.

Q You did not have to eat in a mess hall? A No.

Q You cooked for your husband? A Yes.

Q What did you do for furniture? A We were supplied certain items; and if we wanted something else, we could buy it. We could have things sent from Sears Roebuck; and we had a canteen where curtains could be bought.

Q You had a radio? A Yes.

Q That you bought? A Yes. We had that sent.

Q And you had a dog in camp? A Yes.

133 Q How did the dog get there? A I asked Mr. Collear's permission if I could have him down there; and I had him shipped from New York.

Q He was shipped from New York? A Yes, at our expense.

Q Now, your husband found some people with whom he played bridge in the camp; did he? A Yes.

Q Were they Germans or Japanese? A Germans.

Q He could and did get reading matter? A Yes.

Q And so did you? A Yes.

Q There were movies in the camp for the internees? A Yes.

Q What other forms of recreation or exercise were open to them? A Oh, the internees could have any kind of recreation. They could have New Year's Eve festival in the auditorium, or they could have May Day festival.

Q Some of the Germans had sort of a beer garden; didn't they? A Yes; there was a little canteen
134 which was built like a beer garden; that is true.

* * * *

Q How was the water supply in the camp? A What do you mean? The water? There was enough water.

Q There was no difficulty about water? A No, no.

Q Did you have a garden? A Yes.

Q You did? A Yes.

Q Whose garden was it, yours or your husband's? A My husband tended it.

135 Q You and your husband were always very well treated by the authorities; were you not? A Yes.

Q Now, you mentioned some difficulty with some of the other internees; and you said that your husband was physically assaulted. How often did that occur? A There were quite a few incidents, Mr. Searls.

Q How often was he physically struck, I mean? A Actually struck, he was once.

Q What were the other incidents when he was not physically struck? A At one time, somebody wanted to hit him over the head with a chair, with a metal chair, which was prevented by some other internee.

Q Was there a time when a rock was thrown at him? A Yes.

Q Now, when did all these incidents occur? A Oh, during 1943, 1944.

Q Did they occur in 1944? A Some of—maybe the person that threw the rock was repatriated in January or February, 1944. I believe he was.

Q So he didn't throw the rock after that? A He threw the rock in 1943 then.

136 Q Well, this incident about the chair was in '43, too; wasn't it? A It could have been. I am not quite sure.

Q Let me ask you: Wasn't there an occasion when some of the German internees in the camp tried to put through what they called a camp constitution? A Yes.

Q That was drawn up, I think, by some of the element in the camp that were Nazis? A Yes. That was in 1943.

Q And there was a meeting held to consider that constitution; was there not? A Yes, you are right.

Q Was it at that time that the chair incident occurred? A Yes, that is right. That was in 1943.

Q You say the man tried to hit your husband with a chair? A Yes.

Q Why didn't he? A Because somebody else prevented that man. He held his arm.

Q That was the camp constitution incident, if I may call it such. A Yes.

137 Q That was about October '43; wasn't it? A Yes.

Q And wasn't the time when your husband was struck about the same time? A It could have been. It must have been in 1943, because the man who was spokesman at the time was repatriated in 1944. So it must have been before that time.

Q I put it to you, Mrs. Oehmichen, that these incidents of violence or attempted violence all occurred in connection with this camp constitution at about that time? A Yes.

Q Now, except for that, your husband was not assaulted at any time; was he? A No; but there are other things than assault a person.

Q I will ask you about those later. He made a complaint to the camp authorities about that incident; did he? A He made a complaint, yes.

Q Was what happened that he got into an altercation with two of the butchers at the camp store? A Yes. The butchers did not want to serve me. They had made out—

Q You weren't present when this assault on your husband occurred; were you? A No. It was really

138 I—I went up to the store and wanted to get meat, and the butchers did not want to serve me because they had made out about seven families in the camp which were considered anti-National Socialistic, and we were not to be served. So I came to the store, and the butchers did not take notice of me. They just let me stand there. And then they finally told me: You are not to be served. Then I went home crying; and then Mr. Oehmichen went up to the camp and got into an argument with these men; and when he left the store, two of them had followed him and hit him.

Q Did you make a complaint about the people at the store refusing to serve you? A No.

Q Now, when you say the clerks at the store refused to serve you, or the butchers, there were both German and Japanese clerks in the store; were there not? A Yes.

Q It was all one store? A It was all one store.

Q You could and did buy from Japanese clerks at the store? A Yes.

Q And didn't the authorities in charge of the camp put a stop to any refusal to serve? A They may have.

139 We could not go to the authorities with every little complaint.

Q You recall that your husband signed a second application for repatriation in January 1944? A Yes.

Q And you did? A Yes.

Q Isn't it true that from December 1942, when you arrived at the camp, until you signed those repatriation applications in January of 1944, despite these incidents we have mentioned, you and your husband lived contentedly in the camp? A We did not live contentedly, but as long as no repatriation issue was out, there was no use to worry about it or to apply for it. But when the news about repatriation came, then there was immediately excitement and reason to sign the application.

Q I ask you, Mrs. Oehmichen—this is on Page 113 of the transcript—if you did not testify at the hearing in 1952:

"Question: Did you want to go back?"

That is, to Germany.

"Answer: No. At that time, we were perfectly contented to be in the camp."

140 That was your testimony; was it not? A As I said, when the repatriation issue came up, then we wanted to go; but when the issue was dead, we were contented in the camp.

Q So isn't it fair to say that during that period you felt that you were safe in the camp? A Yes.

Q And after January 1944, you also felt that you were safe in the camp; did you not? A Yes.

Q I mean, safe— A Safe in our—

Q —in your person. A Yes, definitely.

Q Now, personally, you could have left the camp at any time; could you not? A Yes.

Q You were what was called a voluntary internee? A That is right.

Q Now, while you were there, you received an allowance from the Government, did you, for food and clothing? A Yes.

Q Did your husband, before he was repatriated to Germany, take a neutrality oath? A Yes.

141 Q Not to bear arms against the United States? A Yes.

Q Did you and he expect that the German authorities would respect that oath? A Yes.

Q And in fact, your husband did not have to register for military service when he got back to Germany; did he? A Well, when he did not have his passport, he was asked at various times to register for military service.

Q He was asked to explain that. But he didn't register; did he? A He did not, no.

Q So that you and he believed, did you not, when you went back to Germany, that there you would not only be free, but safe from having to serve as a soldier? A Yes.

Q And when you left Crystal City in January of 1945, did you know to what part of Germany you were going? A No.

Q When you got to Bregenz, you stayed there, I think you testified, until about October 1; or is it the last of October? A October, some part in October.

142 Q During that period, did you and your husband make some trips to a town in Germany called Lindau? A Yes.

Q L-i-n-d-a-u? A Yes.

Q What did you do there? A We traded some food stuffs. We had coffee, and this man had butter.

Q You had the coffee and he had the butter? A Yes.

Q Where did you get the coffee? A We brought it from the United States.

Q Brought it from the United States? A And we had bought some on the boat.

Q Was food in Germany rationed at that time? A Yes.

Q Did you understand that these dealings of yours in coffee and butter were contrary to the law? A I don't know that it was contrary to the law for us to give this man coffee. Perhaps it was wrong for him to give us butter. But that was his own predicament. I mean, we could have given him coffee.

Q You weren't giving it; were you? A We were trading it. But he was rationed.

Q Did your husband make one extended trip
143 into Germany while you were at Bregenz? A Yes.

He went to Dresden to find out what happened to his brother's wife and their child; and then he went to Hamburg, where my father and my sister lived; and he saw them and came back.

Q And during that trip, he sold some coffee also; did he not? A Yes. He planned—we could not take any money to Germany when we were repatriated; and so Mr. Oehmichen wanted to borrow some money from my father in Hamburg. And then my sister asked him whether he didn't have any coffee. We could get black market money for coffee. So he sold two pounds of coffee, for which the black market price at that time was 2,500 marks a pound.

Q Was how much? A Two thousand, five hundred marks a pound; and those 5,000 marks lasted us for the whole time, for the whole next year. Couldn't buy anything. Just what was on the ration cards. And that

only cost, I think, 38 or 40 marks a month. So we could live.

* * * *

144 Q When your husband was arrested, did he have in his possession a substantial amount of American currency? A Yes.

Q Do you recall how much? A Oh, I think $5,000, something like that.

Q Wasn't it between 15 and 20 thousand dollars? A No, I don't think so. No.

THE COURT: Is that the arrest in the United States you are talking about?

145 MR. SEARLS: Yes, Your Honor. I haven't gotten to Germany yet.

THE WITNESS: No; I think it was around $5,000.

BY MR. SEARLS:

Q Did you and your husband draw a large sum of money from the bank on December 8, 1941? A I wouldn't say that. Mr. Oehmichen drew this money when —I think it must have been in 1940, when all of a sudden all, not only the German balances in the banks, but also Nationals of other countries, were frozen; and then after that, Mr. Oehmichen talked to the vice president of the bank; and he said: Well, the best thing is to take out some cash and have it in your home, if you don't want to have your money frozen; and that is what Mr. Oehmichen did. He put that money in the bank again afterwards.

Q What bank was that? A The Federal Trust Company in Newark.

* * * *

146 Q Did you testify before the Hearing Examiner that you did not find out why your husband was arrested until April of 1945? A Yes.

* * * *

Q Now, when you arrived in Bregenz, were you required to appear before the police for interrogation?

A Yes. Well, it was not directly requested, but people were asked to go if they had any information.

147 Q Didn't you receive a sheet of instructions? A Yes.

Q And didn't that say you were to appear for interrogation? A Yes. Well, it said—gave the different government agencies, the military and the—whatever—I think it was just the military agencies, the Gestapo, and to show up and give views about the trip and about the camp and about everything.

Q And you and your husband did not go? A No.

Q Did the other repatriates who returned at the same time go, as far as you know? A Quite a few of them went, yes.

Q When your husband was living in Bregenz with you, did he have any papers of identification? A No.

Q You had, did you not? A Yes.

Q How long did you understand, when you arrived in Bregenz, that you would be allowed to remain there? A Officially, it was supposed to be only as a transient place; everybody should go to their home town from Bregenz.

Q After three days? A After three days, or

148 a certain time. And we decided to stay there. Most people left for some other places.

Q And you applied for a permit to stay there? A Yes, we had to apply for—in Germany and in Austria, too, everybody has to register at the police the minute he enters a town; and we had to do that.

Q When did you register with the police, when you first arrived in Bregenz, or when you decided you wanted to stay there? A I think we had to have the permission at that time, because there were so many refugees who would have congregated in all these little towns. You had to get a permission to stay there; which we got.

Q So although your husband had no papers of identification, he did get a permit to stay there? A Yes, to stay there.

Q Indefinitely? A Yes.
Q The permit had no time limit? A No.
Q You liked it in Bregenz; didn't you? A Yes.
Q Did the other people that were repatriated at the time you were leave Bregenz at the end of the
148 three days? A Most of them did.
Q How far is it from Bregenz to Dresden, where your husband went? A Oh, I think it is eight to ten hours.
Q On the train? A On the train, yes.
Q I take it the railroads in Germany at that time did not carry passengers free? A No.
Q Where did your husband get the money to pay the fare to Dresden? A Everybody who arrived on this repatriation got 200 marks or 100 marks, every man, woman and child, to defray their first expenses.
Q Was that an allowance that was paid regularly? A No.
Q Just paid once? A Just once, yes.
Q And your husband went to Dresden from Bregenz on this one or two hundred marks? A I think the trip to—now that I come to think about it, I think the trip was paid to everybody's home town. They arrived in Bregenz, and everybody got a ticket to whichever home town that he wanted to go. That was paid by the
150 German Government. And Mr. Oehmichen said he wanted to go to Dresden or Hamburg; and they paid that trip.
Q And you could have had a ticket, too? A I could have had that, too.
Q When you arrived in Bregenz, did you receive ration coupons, or something like that for food? A Yes, we did.
Q The German Government issued you what kind of an allowance in coupons? A Oh, everybody got first a weekly ration—everybody got a weekly ration; and then those people who left immediately, went to their home

town, where they registered, and then they got the normal rations of that particular place.

Q Where were your husband's relatives in Germany? A In Dresden, near Dresden. His two brothers were in the army, but his sisters-in-law.

Q Did he have relatives in Hamburg, or were those your relatives? A Those were my relatives.

Q Did your husband have any bank accounts in Germany? A No.

* * * *

152 BY MR. SEARLS:

Q Mrs. Oehmichen, when you got these ration coupons from the authorities in Bregenz, did you get an allowance of coupons first for one week? A Yes. They were the traveling coupons for people who did not live permanently in a city. And then when these people were staying for two weeks, or a longer time, they got the regular coupons. The traveling coupons were good all over Germany.

Q You got a regular ration book? A That is it.

Q When you got your permit to stay in Bregenz for an indefinite period? A Yes.

* * * *

154 MR MANN: Your Honor, I object to the admission into evidence of Defendant's Exhibit No. 1, because this is a translation; it does not purport to be a sworn translation. We haven't the translator here so that we can question him; and the Plaintiff, in her testimony, has cast some doubt upon the accuracy of the translation.

* * * *

MR. MANN: I suggest, Your Honor, that it is subject to the best evidence rule, in addition to the fact that it is not a sworn translation.

THE COURT: Now repeat, please, your objection.

MR. MANN: Your Honor, I say that that document

is subject to the best evidence rule. We do not have the original of this document. Mr. Searls is introducing this to show what a document states; and the best evidence of that is the document, itself. We do not have the document before us. That is not even a copy of the document. It is what purports to be a translation. It is not a sworn translation. And I would call Your Honor's attention to the fact that the Plaintiff, in her testimony, has cast considerable doubt upon the accuracy of that translation.

* * * *

THE COURT: Who is this interpreter?

MR. SEARLS: That was a translator at the Crystal City camp, I understand, working under Mr. O'Rourke, who is here, and will testify.

* * * *

THE COURT: Well, this Martha Bertschler, she has no official position; does she?

MR. SEARLS: The translator, Your Honor?

THE COURT: Yes.

MR. SEARLS: She was an official translator at the Crystal City camp.

THE COURT: Was or was not?

MR. SEARLS: Was. At least, employed by the camp.

MR. MANN: Your Honor, since Mr. Searls has undertaken to testify, I would like to know if he was present in the Crystal City internment camp and saw him there?

MR. SEARLS: I can produce Mr. O'Rourke to testify to that. He will testify that that person was—I don't know whether the only translator—a translator working under him at the camp.

* * * *

MR. SEARLS: Your Honor, may I read the passage from the transcript before the Examiner

which I read to her this morning and which she said was her testimony at that time?

THE COURT: Yes.

MR. SEARLS: She is asked by Mr. Pehle, of the same firm as Mr. Mann, who was then examining her:

"Mrs. Oekmichen, it is fair to say that you have no question to say that this is a true copy of the letter?"

Referring to that letter.

And the answer was:

"Yes."

* * * * *

161 (Whereupon Defendant's Exhibits Nos. 1 and 2 were received in evidence.)

* * * * *

162 Q What work did you do in the business? A I wrote the German correspondence.

Q Did you do any of the selling? A No.

Q What was the name of the corporation for which you worked? A The Rhine Bavarian Corporation; later on the United States Imports and Exports Corporation.

Q Were you a director of the Rhine Bavarian Corporation. A Yes.

Q Was a lawyer in New York named William Topken a director of that corporation? A He may have been. I don't recall.

Q You know him; do you? A Yes.

Q Was he the lawyer at that time for the German Consulate in New York? A The Consulate had many lawyers. He may have been one of them.

163 Q You don't know that he was a lawyer for the Consulate? A He did work. He was in the same building. He did verifying of documents for them.

Q Going back to the time when your husband was at Ellis Island, he was there for ten months, I believe? A Yes.

Q Was he kept there instead of being transferred to a camp at his own request? A Yes.

Q In order to wind up his business affairs? A In order to make out all the forms that were necessary. After Mr. Oehmichen's internment, he had to give complete reports about his funds in the banks, and about the various corporations.

Q And he did make out all those reports while he was there? A Yes, sir.

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164 BY MR. SEARLS:

Q You mentioned a military camp. What kind of a camp were you referring to there? A Before
165 the family camps were established, the men that were interned were sent to military camps.

Q Crystal City was not a military camp? A No; Crystal City was not a military camp. It was a family camp.

Q While he was at Ellis Island, and up until the time you became ill, you were allowed to visit him every week? A Yes.

Q When you were ill, he was allowed to come visit you? A Yes.

Q Daily? A Not every day. Several times a week.

Q When was the first repatriation from Crystal City? A In January or February 1944.

Q Now, while you were at Crystal City, your husband was never confined to the hospital; was he? A Yes, he was.

Q He was? For how long? A He was there for observation for a week.

Q When was that? A It must have been before I went to the wedding. Sometime, August, September of 1944.

Q And he was then discharged? A Yes.

• • • •

167 Q This Rhine Bavarian Corporation that you have mentioned, that advertised, did it not, in a

paper called the "Deutsche Weckruf"? A We advertised in most German-language papers in the country.

Q The "Weckruf," among others? A That could be possible.

Q Was that the paper published by the German-American Bund? A I don't know. It might have been.

* * * *

170 MURRAY H. NANCE, JR.

was called as a witness by and on behalf of the Defendant and, having been first duly sworn, was examined and testified as follows:

171 DIRECT EXAMINATION

BY MR. SEARLS:

Q What is your full name? A Murray H. Nance, Jr.

Q Where do you live, Mr. Nance? A Sherman, Texas.

Q Are you a member of the bar? A Yes, I am.

Q Bar of the State of Texas? A Of the State of Texas, licensed, practicing attorney.

Q Where did you get your legal education? A Baylor University, Waco, Texas.

Q Were you formerly a Special Agent for the Federal Bureau of Investigation? A Yes, I was.

Q For how long? A For a period of approximately six years from 1940 through 1946.

Q Do you at present hold any official position? A Yes, I do. I am County Attorney of Grayson County, Texas.

Q Were you in charge of the party which arrested Mr. Oehmichen on March 2, 1942? A Yes, I was.

172 Q At what time of day did you make the arrest? A Somewhere around seven, or seven-thirty at night.

Q Did you ask Mr. Oehmichen and his wife for per-

mission to search the apartment? A I had an Executive warrant and we asked permission also.

Q By the way, who was with you? A There were two officers from the East Orange Police Department, and another Special Agent of the FBI.

Q When you searched the apartment, what did you find? A We found a large quantity of money. I would say, oh, 15 to 20 thousand dollars in American money. They were primarily in thousand dollar bills; and in some envelopes stuck in one or two different places around the apartment in books. Then we found a number of German newspapers and magazines. There was a scrapbook or two or three sections of a scrapbook there. I recall a list from the Hamburg Steamship Line, a list of Germans that had been sent to Mr. Oehmichen from the Steamship Line. There was a—I believe it was an invitation to a party or some announcement from a firm of lawyers in New York City. There was also a—I believe a couple of letters from an association dealing with the sending of material or clothing or supplies to Germans that had been interned. I believe there were some in Canada. There was some—I believe there were
173 Reich wandermarks, or German marks of some kind that were found there.

Q At that time, the time of which I am speaking, you already had the warrant for his arrest? A Yes, we did.

Q And at that time, did you talk with him? A Yes, we talked.

Q There in the apartment? A There in his apartment, I talked to Mr. Oehmichen.

Q Do you recall what the conversation was? A Parts of it. I know at that time I was actually a supervisor on the Selective Service cases in the Newark Office; and I asked him about registering for the Draft. It is my recollection he told me that he had registered. I also asked him about his naturalization status; and he told me that he had taken out his first papers shortly after

he came to the United States, I believe it was, but that he had gone no further than taking out his first papers.

I asked him then why he had not gone ahead; and it is my recollection that he said that he had been informed, or somehow he had the impression that having taken out first papers, he could go ahead and trade and carry on his business here in the United States without the necessity of going ahead, and it would give him some type of protection for going on, carrying on his business
174 without taking out his other papers, and he could remain a German National and go ahead and carry on his business here.

With regard to the invitation or the notice from the lawyers, he told me that they were the attorneys for the German Consulate in New York City, and they were also his lawyers; that he had used them in connection with his business.

I believe that at that time I had a conversation with him in connection with the Draft, with regard to his serving in the United States Army; and he told me at that time that if he were drafted and compelled to go, he would go, but that he would not fight against the Germans and wouldn't kill any Germans; and that he regarded himself as a German and that he wouldn't fight against the Germans. If it were to fight in the United States Army against the Japanese, someone else, he might do that, but he didn't feel like he could fight against the Germans and kill any Germans.

I remember one other thing. He was talking about the Casino of Nations. I had visited the New York World's Fair when it was held, and he was talking about the Casino of Nations, and that he had been, I believe he had been, oh, probably a caterer or something of that nature in furnishing to them the liquors and wines and beer that were served, and had been in some capacity with the Casino of Nations.

176 Q At what time did you take the Oelmichens to jail? A It was around, I would say, ten-thirty, eleven o'clock that night they were both taken to the East Orange, New Jersey Police Department and were left there overnight.

* * * * *

Q On that morning, did you have any talk with her? A Yes. While we were taking her home, the ques-
177 tion came up, what she was going to do; and I know at the jail something came up about the money; they wanted some money for spending, because we had taken, as I say, this money—it was between 15 and 20 thousand dollars; the exact amount, I don't remember—and they wanted some money for spending money. She wanted some while she was at home; he wanted some while he was going to be at Ellis Island.

As I recall, we did return to them some five or six thousand dollars; and he gave her some to take to be used in connection with running the household, and until whatever decision was made with him.

And then, taking her home, she asked about repatriation, and about the possibility of their returning to Germany. And I told her then that as far as that matter was concerned, our office didn't handle that, and it would have to be taken up with Immigration and Naturalization Service.

He asked me about the same thing en route to Ellis Island.

Q That is, you handled both transfers? You took her home and you took him to Ellis Island? A Yes, I did; that is correct.

Q What did he say to you when you were taking him to Ellis Island? A Well, en route to Ellis Island, he asked me about repatriation, about being returned
178 to Germany; and I told him the same thing; that is, it was a matter he would have to take up with

the Immigration and Naturalization Service, and he could do that at Ellis Island, where I was taking him.

The question came up again about the service in the United States Army; and I remember his asking me that if I were in Germany, as a United States citizen, whether or not I would serve in the German Army. Of course, I told him, if I were an American citizen in Germany, I wouldn't fight against the United States. I would expect to do my part for my country; and I wouldn't fight against the United States. He said that was his same feeling. He was over here. He was a German National; and he didn't feel like he could fight against the Germans and kill them; and he felt like it was an unfair question for me to ask him about serving and fighting against the Germans.

Q Mr. Nance, you handed back, or the office handed back, I suppose, to Mr. and Mrs. Oehmichen five or six thousand dollars. A I gave the money back to them.

Q What was done with the rest of the money? A It was put in an—I believe in a special account over to the bank, and was later then turned over to the United States Attorney's office there in Newark, New Jersey.

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## CROSS EXAMINATION

BY MR. MANN:

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Q Now, in the period of the six years that you worked with the FBI, Mr. Nance, how many cases do you suppose you handled? A I have no idea.

180 Q Well, would it be nearer to one or nearer to a thousand? See if we can narrow this down. A It would be nearer to a thousand.

Q Nearer to a thousand. Do you remember all those cases that you handled pretty well? A I don't remember all of them, no, sir.

Q You don't remember what was the last case you

handled; do you? A I wouldn't remember the last case that I handled, no, sir.

Q I bet you remember the first case you handled, though. A The first case would have been in New Haven, Connecticut, and I don't remember it.

Q Well, of these thousand cases, how many of them do you think that you remember as well as you remember this case of Mr. Oehmichen? A Oh, I would guess probably, oh, eight or ten.

Q Is this one of the eight or ten cases out of a thousand that you remember pretty well? How long did you work on this case of Mr. Oehmichen? A As far as the actual investigation of it, I would guess probably the period would have covered a month.

Q A month. You were investigating Mr. Oeh-
181 michen over the period of a month? A That would be the investigative period. Some of it would have been reporting the results of the search and of taking him over there, reporting other administrative acts that might have been taken in it. That would be the period that it would cover.

Q Now, in conducting this investigation of Mr. Oehmichen, you had a file there; didn't you? A Yes, we had a file made up on it.

Q You made the file yourself? A No, I did not. Let me say this. Do you mean the actual manual operation of putting the papers in the folder?

Q No. I would assume you would have a clerk to do that for you. A Yes, that is correct.

Q But the memoranda and the things that went into the file, you had a lot to do with that; didn't you? A That would be correct.

Q And did you get a number of leads about Mr. Oehmichen from people that thought there was something wrong there? A There were several that came in. I would say, oh, probably three or four that came in.

Q Now, you ran all of these down, of course? A Yes, we did.

182 Q Now, were you told that Mr. Oehmichen owned an airplane? A I believe some such report was made.

Q Now, tell me what you did in running down that one to find out whether Mr. Oehmichen owned an airplane? A I believe we talked to the original complainant, and from the interrogation of him, it developed that it was based purely upon hearsay, and there was no substantiation of that.

Q You concluded that Mr. Oehmichen didn't own an airplane? A I concluded that he did not own an airplane.

Q Did you conclude that he had ever owned one? A I didn't pursue it any further.

Q Do you know a Mr. Conroy; or did you know a Mr. Conroy at the time? A Mr. E. E. Conroy was the agent in charge of the Newark Office.

Q He was in charge of the Newark Office. Did you work under Mr. Conroy? A Yes, I did. He was the agent in charge.

Q Now, did you get a charge that Mr. Oehmichen had his offices in the same building as the German Consulate?

* * * * *

183 BY MR. MANN:

Q Now, you testified, I believe, that Mr. Oehmichen had the same lawyers as the German Consulate? A No, sir, I did not. I testified that he told me that he had such lawyers. I do not know.

Q Did you check into that? A I did not. There was an engraved—as I recall, sort of an engraved invitation, that was small-card size, that was sent to him, and had the firm name on it, with their address.

Q And what was the name of that firm? A I do not recall.

Q Do you remember any name that was on the card? A None at all. As I remember, the address was
184 42 Battery Place, New York City.

Q Now, where was the German Consulate located at that time? A I do not know.

Q Did you ever have a look at this building at 42 Battery Place? A No, sir, I did not.

Q You don't know whether it is a big building or a little building? A No, sir, I do not.

Q Now, you mentioned the conversation that you had with Mr. Oehmichen concerning the Casino of Nations; and I believe you said that he told you that he was the caterer, or something like that? A That is the impression that I got, as I recall, from talking to him, that he had been, oh, what you might call the caterer, he had been in connection with the handling of the German part of the Casino of Nations there.

Q He was in charge of the German part of the Casino of Nations? A Well, whatever relations they had there with it.

Q What relations did they have? A I do not know.

185 Q What are you trying to tell us then? A That that is what he told me.

Q That he was the caterer there? Was he the caterer or was he in charge of the German relations? A I don't remember.

Q You don't remember which? A I know that he had some connection with the Casino of Nations there, from his conversation with me only.

* * * *

Q Suppose I told you that the Casino of Nations was a concession that Mr. Oehmichen had at the World's Fair; would that surprise you? A No.

Q If he told you that, you should have remembered it; shouldn't you? A No.

Q You shouldn't have confused that with a caterer? A By "caterer," I mean somebody that furnishes food, and drinks and other things like that, either to be sold on the premises or to be taken out.

* * * *

186 Q Now, in the search of this apartment, you
187 found large quantities of money? A To me, it was a large quantity. Between fifteen and twenty thousand dollars. Now, the exact amount, I don't recall. It was somewhere within that neighborhood.

Q Who counted the money? A Everybody that was there counted it. The two East Orange police officers, Mr. and Mrs. Oehmichen, and the agent that was with me.

Q Now, you talked with Mr. Oehmichen about so many things. Didn't you talk with him about that money? A I am sure that I did.

Q And he told you why he had it; didn't he? A I don't have any recollection of it.

Q You don't recall that? A No, I do not.

Q You don't recall a conversation in which he told you why he had that money? A No, I do not.

Q Well now, let me see if I can refresh your recollection a little on that, Mr. Nance. Do you remember anything about his saying that he had that money on the advice of one of the top officials of the Federal Trust, I believe it is, Federal Savings Bank there in Newark?

A I don't recall any such conversation. There is
188 such a bank there, I recall.

Q What did you ask him about that money then? Didn't you ask him why he happened to have it? A I probably did.

Q What did he tell you? A I don't remember the conversation. The large amount sticks in my mind, and the fact that he wanted some money to take with him when he was going to be locked up, and that he wanted what to me was a large amount, five or six thousand,

because the man was going to be taken to Ellis Island, was going to be put in jail.

* * * * *

190 Q Now, Mr. Nance, you testified that you found some letters there that had to do with sending clothing to some internees, German internees. Am I correct in that? A Yes, sir, that is correct.

Q What did these letters say? A It was thanking them, for sending some clothing to people that had been interned, some Germans that had been interned.

Q Now, what was the date of these letters? A The exact date, I do not recall.

Q What was the date that the clothing was sent that they were thanking them for? A I do not know.

Q So you don't know whether it was '39 or '40 or '41? A No, I do not.

191 Q Now, you testified you found a list of Germans sent by Hamburg Steamship Line. Which Hamburg Steamship Line? A The one there in New York.

Q You mean the Hamburg-American? A Yes, It had the word, "Bremen," up at the top, the ship, "Bremen."

Q What was this list that you found, Mr. Nance? A It was a list of the names of Germans living in the United States.

Q In what connection was that sent to them? A I have no idea. I have no way of knowing.

Q So you don't know whether this was a business directory, or whether it was the last sailing of Germans on the Hamburg-American Line, or what it was? A No, I do not.

Q Now, was it Mr. Conroy's habit to give statements to the press every now and then? A Are you talking about E. E. Conroy, the agent in charge?

Q Yes, I am, your superior at the time. A He could have or not. That was up to him. I had no control over

it. He could if he so desired, I guess, subject to the approval of the Bureau.

MR. MANN: Let me see Plaintiff's Exhibits 4, 5, 6 and 7. Rather, 5, 6 and 7.

192 BY MR. MANN:

Q I show you Plaintiff's Exhibit No. 6, and direct your attention to the last item. That is Mr. E. E. Conroy, who was your superior? A Yes, he was.

Q Now, in reading that article, who do you think was the source of that news item? A I have no idea.

Q Mr. Conroy's name is just put in there. Didn't you know at that time this appeared in the New York Times on March 5, 1942, that Mr. Oehmichen didn't own an airplane? A It is my recollection that I knew that.

Q You don't know whether Mr. Conroy knew it or not? A I do not know; and I did not give the release to the New York Times. I was stationed in Newark, New Jersey, and I know not what was printed in the New York Times.

* * * *

193 Q Mr. Nance, you have testified that you had talks concerning repatriation with Mrs. Oehmichen and Mr. Oehmichen. I believe you stated on direct it was when you took her home and took him over to Ellis Island? A (Witness nods assent.)

Q Now, do you recall any other time you were present when the matter of repatriation was discussed with
194 Mrs. Oehmichen? A I believe that it came up at the hearing before the Alien Enemy Board. Other than that, I do not recall any other conversation. That is the only other possible time that I recall it.

* * * *

BY MR. MANN:

Q Did you participate in a conversation at the United States Attorney's Office at which Mr. Thorn Lord was present and Mrs. Oehmichen? A Mr. Thorn Lord was

an Assistant United States Attorney. As I recall, he handled the Enemy Alien hearing. That was the only other occasion, as I remember seeing them at the United States Attorney's office, was at the hearing.

Q Just one moment. Don't you recall then a conversation that took place in your office with Mrs. Oehmicher, at which Mr. Thorn Lord was present, in which you had telephoned Mrs. Oehmichen and asked her to come to your office? A I don't recall any such conversation. I don't recall it.

195 Q Let me just go a little further and see if it refreshes your memory. In this conversation you were quite agitated and Mr. Thorn Lord was quite agitated concerning the fact that Mr. Oehmichen had signed the repatriation request, and that was what you wanted to discuss with Mrs. Oehmichen? A I don't recall any such conversation. I don't remember her being at our office at all.

Q You don't remember. You don't remember this conversation in which Mr. Thorn Lord mentioned the repatriation request and said: You people done't belong with the Germans. A No, I don't remember any such conversation. He was Assistant United States Attorney in the Newark Office; he handled the Alien Enemy hearing.

Q But this conversation at the time of Mr. Oehmichen signing the first repatriation request, you have no recollection of that? A No, I do not. I delivered him to Ellis Island; and the next I remember seeing him was at the Enemy Alien hearing, and he had already made—I presume, I don't know—I didn't ever see the actual request for repatriation.

* * * *

196 JOSEPH L. O'ROURKE

was called as a witness by and on behalf of the Defendant and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SEARLS:

Q Mr. O'Rourke, what is your full name? A Joseph L. O'Rourke.

Q And your address? A 5924 Buena Vista, Mission, Kansas.

Q Are you at present employed by the Government? A No, I am not.

Q You are retired? A I was retired October 1, 1954.

Q With what agency of the Government had you been employed? A The Immigration and Naturalization Service, Department of Justice.

Q During the war, or part of the war, were you in command of the Crystal City camp? A Yes, I was.

Q During what period? A I was transferred
197 to Crystal City in June of 1943, and I remained on duty at Crystal City until January of 1947, at which time I was transferred to Kansas City, Missouri.

Q What was the official title of that camp? A Crystal City Internment Camp.

Q Was it what has been called a family camp? A It was a family-type camp. yes.

Q Was that the only one of that kind? A It was.

Q When you were at Crystal City, did you know Mr. and Mrs. Oehmichen? A Yes, I did.

Q How large was the camp, I mean, in area? A Oh, I would say we had about 240 acres in the entire set-up.

Q How many internees did you have there? A Roughly, between 35 and 38 hundred.

Q Both Japanese and Germans? A Both Japanese and Germans.

Q More Germans or more Japanese? A More Japanese. I would say the percentage was about forty per cent German and sixty per cent Japanese.

Q What type of accommodations, housing accommo-

dations did you have in the camp? A Well, we
198 had a lot of different types. We had one type that was known as the cottage type, that housed one family. Then we had a duplex, that housed two families. We had triplex, that housed three families. And we had a quad, that housed four families. And we had what is known as a shelter area. That housed just one family.

Q What type of accommodations did the Oehmichens live in? A They lived in the shelter area.

Q In what part of the camp? A It was somewhat isolated from the rest of the dwellings. It was down close to the hospital, near the main gate.

Q What occupation was provided in the camp for the internees? A Well, we had a rather diversified line of work. There were mechanics, plumbers, electricians, electricians' helpers. We had a farm that we operated with internee help. We had pigs; a pig man that took care of the pigs. General, all-around maintenance work.

Q Was there also clerical work? A Yes, there were a few clerical positions.

Q And selling? A And then we had—we ran our store within the camp, and we had store clerks on duty, both in the grocery store and the clothing store.

199 Q What recreational facilities were there? A Well, in so far as the administration was concerned, we furnished movies twice a week; and then we had a huge swimming pool.

Q What other activities were there for them? A Well, there were a lot of different activities. A lot of the people formed their own groups. They had baseball; and some played tennis or badminton. Some of the younger people played football.

Q What activities did Mr. Oehmichen engage in, as you observed him? A The only one I ever observed Mr. Oehmichen was playing tennis, or a form of tennis, badminton.

Q How were these types of work allotted among the internees? How did a man get to do a certain type of work? A Well, he would apply to our liaison officer within the area. We had an employment section headed by the Chief of the Internal Security.

Q As far as you know, did Mr. Oehmichen ever apply for employment while you were there? A Not that I ever knew of, no, sir.

Q What medical facilities did you have at the camp?

200 A We had a thirty-bed hospital, and we had a staff that was headed by a major doctor of the United States Public Health Service; we had a captain in the United States Public Health Service that headed the medical corps; and then we had six Public Health Service nurses.

Q Were there any doctors among the internees, themselves? A Among the internees, there were, I think, three doctors in the German group, and three doctors and two dentists in the Japanese group.

Q How about schools? A Well, we had a school system, an American school system through high school; and we were affiliated with the State Board of Education of the State of Texas; and our school was manned by professional people, American citizens. Any youngster graduating from a school within the internment area proper had the same scholastic standing in the State of Texas as if he had graduated from a school in San Antonio, or Dallas, or anywhere in the state.

Q There has been some reference, Mr. O'Rourke, in earlier testimony, to a camp constitution. Can you give us the facts on that as you recall it?

* * * *

201 Q Did you ever hear of a camp constitution?

A What do you mean by a "camp constitution"? That was initiated by the administration or by the internees?

Q By the internees. A Yes, I did.

Q You are referring now to all the internees or to just the Germans? A The German group.

Q Which group, the German group? A The German group.

Q Was that constitution adopted or accepted by the administration of the camp? A No, most certainly not.

Q What was done about representation for the internees? A Well, of course, the Germans—each group of people, like the Germans and the Japanese, would elect a spokesman; and he was supposed to act as the officer between the administration and the internee group. Also, in both the German groups and the Japanese groups, there were a number of internees that were no way interested in returning to either Germany or Japan.

202 This German spokesman more or less represented people who were returning to the homeland. And so the people who did not desire or elect to return to Germany, it was not necessary for them to have a spokesman. They made all their contacts direct with the members of the official force.

Q That is members, individual internees could communicate with you or your assistants as they chose? A Yes, they could. It was a little more difficult to communicate with me, because I was outside. They could apply to the office inside, and an appointment would be made for them.

Q Did you have any complaints from Mr. Oehmichen about his health? A No, I didn't.

Q How did he look to you when you saw him, healthy? A He always looked healthy to me.

Q How about Mrs. Oehmichen? A She always looked healthy, too.

Q Did you at any time have any conversation or hear any conversation by Mr. or Mrs. Oehmichen about repatriation? A Yes, I did.

Q Which one was it that you heard? A It was the repatriation movement that we had in 1944.

203 Q Who was present and what was said? A Mr. Kelly, our assistant commissioner in charge of internment was at Crystal City Camp at this time; and in the list that was published including the names of those to be repatriated, the name of Mr. Oehmichen did not appear. So he requested permission to see Mr. Kelly in my office, inquiring as to whether or not Mr. Kelly might find any way possible to have his name added to the repatriation list.

Q Did you have any conversation with Mr. Oehmichen immediately before his repatriation? A Yes, I did.

Q Will you tell us what that was? A Well, I had received a report from my internal security officer that Mr. Oehmichen was causing a little uneasiness in connection with the preparation of the repatriation party, and that he had circulated a report that the reason we were issuing overcoats to the group was that they were going by way of the Artic, and possibly might be turned over to the Russians.

So I went in the compound, and I contacted Mr. Oehmichen and directed him to return to his quarters and stay there.

Q Was an overcoat issued to Mr. Oehmichen at that time? A Mr. Oehmichen was issued an overcoat

204 by the camp facility.

Q And was that overcoat returned? A The overcoat was returned somewhere close to five o'clock that night, after I had directed him to turn that coat back. We issued coats to people who did not have them.

Q Did you receive a complaint about the time that Mr. Oehmichen said he was assaulted? A Yes, I did.

Q Did you have an investigation made? A I did.

Q Did you have more than one complaint along that line from him? A No, none other than that, that I recall.

Q Was there any complaint to you by Mr. or Mrs. Oehmichen about refusal of the clerks at the store to serve them? A No, there was not.

MR. SEARLS: May I have Defendant's Exhibit 1, please.

BY MR. SEARLS:

Q I show you Defendant's Exhibit 1, and call your attention to the name of the translator. Was that person employed as a translator at the camp? A Yes, she was.

Q While you were in command there? A Yes,
205 she was.

Q And did the original of that letter go across your desk? A Yes, it did.

Q Will you tell us why it should go across your desk? A Well, it was a letter that was directed to the Swiss Legation, who was the protecting power for the Nationals of Germany, and all letters of that nature went across my desk.

Q Mr. O'Rourke, in addition to this school system that you said, did they have a German school? A Yes. We had the American school system through high school, and then we had a German school system, and also a Japanese school system.

Q What were the German and Japanese schools for, if you know? A The German and Japanese schools were conducted for the purpose of educating the children in the camp who were to return to Germany. In Crystal City, we had a large number of Germans and their wives and children from the Latin American countries. Practically all of these people had never been in the United States, and in many cases, the youngsters just spoke Spanish and German, and they were merely stopping off here on their way to being repatriated to Germany.

206 Q Had Mr. Oehmichen served as a spokesman for the German internees? A Not during my time in camp.

• • • •

Q Was any complaint made by him or his
207 wife to you about his health? A No, was not.

Q Did you have any opportunity to observe his political attitude? A No, I didn't.

Q But as far as you know, except for this one incident in '43, there was no collision between him and the other internees? A None that I know of, no sir.

MR. SEARLS: You may examine.

## CROSS EXAMINATION

BY MR. MANN:

Q Mr. O'Rourke, how many times would you say that you actually had occasion to really observe Mr. Oehmichen, by talking with him, so that you could form some impression of what he was thinking about, how he felt about things, or even how he felt physically? How many times would you say that you saw him? A Oh, I would say probably not more than ten times.

Q Ten times in this period when he was there? A Ten times.

Q Now, would it be possible, Mr. O'Rourke, that he could have applied for employment of some sort or entered a complaint about his health and that you would not have known about it? A Yes, it would have
208 been possible.

Q Now, Mr. O'Rourke, you did testify that you discussed the question of repatriation with Mr. Oehmichen? A That I discussed it?

Q Yes. A With Mr. Oehmichen?

Q Yes. A No. I testified that Mr. Oehmichen discussed it with Mr. Kelly in my presence.

Q In your presence? A Yes, sir.

Q Did you ever have occasion to talk with Mr. Oehmichen about his return to Germany? A No, I didn't.

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210 RECROSS EXAMINATION

BY MR. MANN:

Q Mr. O'Rourke, I believe you testified that Mr. Oehmichen said that he would not accept a parole? A Well, he didn't say he would not. We had this form prepared. He executed the form and said he would not accept a parole.

Q Did he ever change his mind concerning that, in so far as you know? A Not as far as I know.

Q Now, Mr. O'Rourke, I would like to show you
211 a copy of Plaintiff's Exhibit 23. Do you remember that letter? A Yes, I do.

Q You received it? A Yes, I did.

Q Do you remember the enclosure to it? A Well, I received a copy of that, too.

Q You received that letter and the enclosure? A And the enclosure. A copy to me, a copy to Mr. Kelly, a copy to Mr. Lord, a copy to Ennis.

* * * *

220 PROCEEDINGS

THE COURT: All right, Mr. Mann.

MR. MANN: If Your Honor please, yesterday, Mr. Searls took his witnesses out of order to enable them to catch a train, so that they wouldn't be detained here overnight.

I would like to suggest to Your Honor that since we have done that, that we permit Mr. Searls to finish his case, and then I will call Mrs. Oehmichen, the Plaintiff, in redirect and rebuttal at the same time.

THE COURT: That would be agreeable to me, but I wouldn't want to rule you to that.

MR. SEARLS: That is all right with me, Your Honor.

THE COURT: All right.

MR. SEARLS: Your Honor, I want to offer a depo-

sition taken on behalf of the Defendant at Asheville, North Carolina, on April 3 of this year.

* * * *

MR. SEARLS: Mr. Taylor, will you take the stand. Your Honor, omitting the merely formal parts, I shall read the questions, and Mr. Taylor will read the
221 answers. The witness was Oscar F. Meredith.

"Q What is your full name, please? "A Oscar F. Meredith.

"Q What is your address? "A The Post office is Route 4, Hendersonville, North Carolina. Route 4 is the official address.

"Q How long have you lived there? "A Eight years the 23rd of this month.

"Q You are testifying here under subpoena? You understand? "A I understand, if I read this.

"Q You were formerly a vice president of the First National Bank in Chicago, Illinois? "A That's right.

"Q As vice president of that bank, what classification of accounts did you deal with? "A If you will just bear with me—it was called a specialized division. Wholesale grocers, canners, cold storage warehouses, poultry, butter and eggs, confectionaries, beverage industries, chemicals, churches, colleges, cemeteries, undertakers, ministers. It was a highly specialized division. I mention this because it was written up in the Chicago Tribune.

"Q As vice president of the bank, did you come
222 to know a Mr. Erhard Oehmichen? "A Yes, I did.

"Q Did he have an account with the bank? "A Yes, he did.

"Q And being in charge of this division that you have mentioned, you came in contact with him? "A Yes, a few times, not very often. It was a non-borrowing account, which means just a depository relationship.

"Q Where did he live? "A Somewhere in New Jersey. As I remember, Maplewood. I had that in mind. That may be wrong.

"Q You did talk with him a few times in the bank? "A He talked with me.

* * * *

223 "Q I believe he had one rather extended talk with you about the current conditions, political conditions, and so forth?"

MR. SEARLS: And then, Your Honor—

MR. MANN: Object, Your Honor. This is a leading question, and Mr. Searls did not correct the question at the time. I believe, Your Honor, that I am correct in saying that in taking a deposition, objections to form are made at the time, and your opponent is given an
224 opportunity to correct his question. He did not correct his question. Therefore, I suggest that this next answer not be read, because it is in response to a leading question.

THE COURT: Reread the question.

MR. SEARLS: "I believe he had one rather extended talk with you about the current conditions, political conditions, and so forth."

MR. MANN: I think the previous questions have to be taken into consideration with that one question, Your Honor.

THE COURT: Overruled.

"Q Will you tell us what he said, as you recall it? "A I want to say this that Mr. Oehmichen was, in my opinion unnecessarily talkative. He was apparently a great enthusiast about the possibilities of what Hitler and Mussolini had and were going to accomplish; and that seemed to be the principal theme of his representations to me. All I would say, I don't know why he picked on me to tell me about it.

"Q Will you tell us as much as you can remember of this one time? "A It may have been one or two times

Mr. Searls. He was definitely very enthusiastic about what Hitler, particularly, had accomplished in Germany, eliminating, as I recall it, well, all the political
225 parties, and he seemed to think that under Hitler and Mussolini everything was going to be fine. If I take a little bit more time—remember, this was fifteen years ago. He seemed to be absolutely sure that Hitler and Mussolini were going to win. I recall particularly, and again, I say, I don't know why he should have picked on me to have voluntarily given this information, that Hitler and Mussolini would win their projects, would subdue France almost immediately, and then with the German and Italian Navy, to which would be added that of the French, he seemed to think that England and the United States would be absolutely helpless. To me, it was almost humorous, if you will pardon that approach.

"I recall particularly—and this is mostly in one conversation—he referred to the unemployment in the United States, and we had plenty of it at that time; and his position was that when Hitler and Mussolini had won over there, our unemployment, whatever it was, would probably double. I remember one question I asked him, about the only one I remember asking, because I wasn't encouraging the fellow: What they were going to use for money. Because, after all, I remember I was in banking after the First World War, I knew the difficulties; and Mr. Oehmichen, as I recall it, seemed to think they had
226 been able to get along pretty well without money, and could continue to through the methods then being employed, of keeping people employed. I remember also that he referred to our gold supply—I don't know exactly what it was, it was pretty big—and I remember he said it was dangerous for us to own."

THE COURT: Dangerous to what?

MR. SEARLS: "Q-w-n," Your Honor.

"Let me think just a minute. There was something more in that conversation. Oh, yes, he criticized the

President of the United States for things he allegedly had said which were derogatory to Hitler and Mussolini. I think, Mr. Searls, that just about finishes anything I remember."

MR. MANN: If Your Honor please, I move that the entire answer be stricken, on the ground that it has no relevancy whatsoever to this proceeding.

THE COURT: Deny the motion.

"Q Mr. Meredith, you have used some expressions like, 'he seemed to think,' or, 'he seemed to be convinced.' When you used these expressions, were you referring to statements made to you by him? "A I was referring more particularly to his general attitude, which apparently caused him to be willing to voluntarily make
227 these statements to me.

"Q Did he say anything about the chances of a war between the United States and Germany? "A Not to my recollection. No.

"Q Was this before the United States got into the war? "A Yes, it was, because we didn't get into the war until after December 7, 1941; and I know we were not at war at the time he made his representations to me.

* * * *

"Q You said this conversation—you said, I think, it seemed to be almost humorous. Do you mean he was joking? "A No, I don't think he was joking, but it was damned silly; and I couldn't understand why he should have picked on me to expound his views so enthusiastically.

"Q In that conversation, did he mention or refer to the relative strength of the United States and the Axis powers? "A Not in that particular connection.
228 If you will permit me to answer—I think he rather felt sorry for England after the German and Italian and French Navies got in; and he felt that the United States would be rather impotent, because, I recall particularly, he referred to the unemployment. He referred.

to our lack of an army, and he referred to the impotency of our Navy, because it was in the Pacific.

"Q Did he say anything about the relative merits of democracy and the form of government under Hitler and Mussolini? "A No; he missed that one.

"Q I think you said after you left the bank, you no longer saw Mr. Oehmichen? "A No, I haven't seen him.

"Q Did you meet his wife, the Plaintiff in this suit? "A I did not."

• • • •

MR. SEARLS: Cross examination by Mr. Mann, Your Honor.

229 "Q Mr. Meredith, you have referred with some particularity to one conversation. When did this conversation take place? "A I can't tell you the exact time. I know it was before December 7, 1941. Probably '39 or '40, or thereabouts.

"Q When you saw the most of Mr. Oehmichen was when he lived in Chicago; wasn't it? "A I don't know he ever lived in Chicago.

"Q He did live in Chicago? "A I don't know. I never knew it if he did.

"Q When was the last time you saw Mr. Oehmichen? "A About the time of those conversations back in '39, '40 or '41.

"Q You don't remember whether it was '39, '40 or '41? "A It was about the time Messrs. Hitler and Mussolini were making their big campaigns against Poland, Haile Selassie, and so forth. I think probably it was in '40.

"At the time these statements were made, the United States wasn't in the war? "A No, definitely not.

• • • •

230 "Q How many times do you think you saw Mr. Oehmichen? "A I would say not more than four or five at the maximum. I am being liberal. There wasn't any occasion for me to see Mr. Oehmichen. He was

purely a deposit customer, sought no credit, didn't ask for any assistance to help him sell wine among the many distributors we had in the bank. There wasn't much occasion for me to see him.

"Q When was the first time you ever saw him? "A I think all the times I saw him were probably in a period of six months. I can't remember when his account
231 was opened; but I think all the times I saw him didn't cover a period of more than six or eight months at the most.

• • • •

MR. SEARLS: Then the redirect examination, Your Honor.

"Q Let us go back for a moment to the date of this conversation. You will probably recall that it was in June of 1940, I think, that the German Army made its big campaign against France, and the British Army was driven out of the Continent of Europe. Do those facts
232 help you place the date of that conversation at all?

"A As I recall it, one of the things that impressed me was Hitler's Army overrunning Poland. I also remember when Mussolini was going after Haile Selassie down there. In my mind, it was a terribly disturbing thing; and I guess it was about that time they got around the Maginot Line, which more or less put France out of the war as far as combat was concerned; so I would think your idea of the date is about right; though I won't set any exact date."

MR. SEARLS: This is recross, Your Honor.

"Q At the time Hitler had overrun France, who did you think was winning the war? "A I hadn't made up my mind yet; though Mr. Oehmichen apparently thought the United States had lost it.

"Q I believe you testified earlier that the United States wasn't in the war at this time? "A Yes.

"Q You can't remember, Mr. Meredith, whether it was at the time of the attack on Poland or the attack on

Haile Selassie? You can't remember which of those times? "A They all occurred almost simultaneously; and I am sure when Mr. Oehmichen attacked the President of the United States, it was in connection with the dedication of the Outer Drive Bridge in Chicago, when the President of the United States indicated he knew how to handle aggressors by quarantine. I don't know whether I agree with the Chicago Tribune or not. That was about the time he attacked the President for his derogatory remarks about Hitler."

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* * * *

"Q Did Mr. Oehmichen make any reference about a speech of the President of the United States in which he spoke of Mussolini stabbing France in the back? "A I don't recall anything like that."

MR. SEARLS: That, Your Honor, is the deposition. Examination by the witness and signature were waived.

I offer that in evidence on behalf of the Defendant.

THE COURT: All right. It is admitted. It has been read.

* * * *

234 (Whereupon Defendant's Exhibits Nos. 4 and 5 were received in evidence.)

* * * *

236 ANNI HELENE JOHANNA OEHMICHEN

was recalled as a witness and having been previously duly sworn, was examined and testified further as follows:

DIRECT EXAMINATION

BY MR. MANN:

Q Mrs. Oehmichen, you have just heard the reading of the deposition of Mr. Meredith, in which Mr. Meredith stated that Mr. Oehmichen was in the First World War. Was Mr. Oehmichen in the First World War? A No; he was too young to be in the First World War.

Q How old was he at the beginning of the First World War? A He was twelve years old; and he was sixteen when the war ended.

Q When Mr. Searls questioned you on cross examination yesterday, he asked you if you felt safe in the Crystal City internment camp in 1944. Did you
237 feel safe in the Crystal City Internment Camp in 1944? A I, personally, felt safe. Nobody had physically attacked me. But Mr. Oehmichen never lost the fear of all these people. They had threatened him; they threatened him as late as on the train when we went through France. Mr. Nickolini threatened me that something would happen to Mr. Kessering and his friends; and he was a friend of Mr. Oehmichen; which meant they were planning to do something against Mr. Oehmichen.

THE COURT: What occasion was when you went to France?

THE WITNESS: When we went to France.

THE COURT: At what time?

THE WITNESS: In January of 1945.

BY MR. MANN:

Q This was on the train when you were being returned to Austria? A Yes. And previously, I had never spoken with Mr. Nickolini; but they had an infant baby, and I commented—I talked to the baby; I said something about the baby; and then Mr. Nickolini came to me and after saying a few things, he said: Something will happen to Kessering and his friends when you get to Germany.

Q Did you ever see Mr. Nickolini again after
238 you arrived in Bregenz? A Yes.

* * * *

239 Q Now, it has been suggested in this trial that you had an opportunity to leave the internment camp at Crystal City and go to another camp at Seagoville. As a matter of fact, one of the Defendant's exhibits

is a questionnaire in which Mr. Oehmichen stated that he did not want to go to Seagoville. Could you tell us, Mrs. Oehmichen, why you did not want to go to Seagoville? A Mr. Mann, there was no reason for us to believe that the people in Seagoville would be different from the people in Crystal City, that the Nazis would not have a say in everything. Besides, Seagoville had been a reformatory for girls and it consisted of big buildings. We would have just exchanged barbed wire with walls, stone walls. There was no—we didn't see any betterment in changing from Crystal City to Seagoville.

• • • • •

240 Q In his cross examination of yesterday, Mr. Searls referred to the fact that Plaintiff's Exhibit in evidence No. 22 did not use the word "parole." I show you Plaintiff's Exhibit No. 22, and I ask you, was that an application for parole? A Yes, it was.

Q Would you read me the part of the letter that you considered the application for parole? A "For all the reasons stated, I herewith ask you to review my husband's case and to consider to release him as soon as possible. We have nothing to add to the various statements given to the United States Attorney, Mr. Thorn Lord, in Newark and Trenton, and the agents of the FBI at several hearings and conversations. We would be willing to live in Chicago for the time being and we would also have several people who would act as sponsors for Mr. Oehmichen."

Q You intended that as an application for parole? A Yes.

Q Why didn't you use the word, "parole"? A Well, to you as a lawyer, Mr. Mann, "parole," may mean something different; but to me, "release" and "parole" meant the same thing. There is no difference. He could
241 only be released on parole at that time. There was no other release.

Q And what is meant by "sponsors," Mrs. Oehmichen? A Some people had to vouch for the person that was released, and took the responsibility, I think.

Q Mrs. Oehmichen, you heard Mr. Nance's testimony that you had large sums of money in your apartment at the time of your arrest. Did you have a substantial sum of money in your apartment at the time of your arrest? A Yes.

Q How did you happen to have it? A A year before the outbreak of the war, I believe it was a Presidential Decree, that all foreign assets were frozen in the United States. This did not just concern German Nationals, but nationals of all countries. I believe this was in 1940, in the spring of 1940. And when the war broke out, Mr. Oehmichen didn't want his assets frozen. He wanted to have money to tide us over the war. And, consequently, he talked to Mr. Feldman, the vice president of the Federal Trust Company, which was our bank in Newark; and Mr. Feldman then advised to take out some money; which Mr. Oehmichen did.

Q Before withdrawing any money, he talked with
242 Mr. Feldman, the vice president of the bank? A Yes, yes.

* * * * *

Q Mrs. Oehmichen, I show you Plaintiff's Exhibit No. 32, for identification, and ask you to tell me what it is? A This is my receipt to the FBI of various articles that the Federal Bureau of Investigation had taken from my apartment, and they returned these things. And then it mentions the amount that was taken; and it says that—

Q This is the amount of money that was taken? A That is the amount of money that was taken.

Q What was that amount? A That was presently being held awaiting the outcome of this matter before the Attorney General.

Q What was the amount of the money? A Thirteen thousand dollars, 13,000 Reichmarks.

MR. MANN: I offer in evidence Plaintiff's Exhibit No. 32 for identification as Plaintiff's Exhibit No. 32 in evidence.

MR. SEARLS: No objection.

* * * *

243 (Whereupon Plaintiff's Exhibit No. 32 was received in evidence.)

BY MR. MANN:

Q Now, was all the money that was taken from you given back to you? A Yes.

Q Was it all given back at one time? A Yes.

Q Did you or Mr. Oehmichen ask Mr. Nance to advance you some money for a living allowance? A No.

Q Was any money advanced to you for a living allowance? A No. This was returned to me by Mr. Nance; and we both went to the Federal Trust Company and deposited the money.

Q Now, Mrs. Oehmichen, you heard Mr. Nance yesterday when he testified that when he returned you to your home after your arrest, and after you had spent the night in jail, that you discussed with him on the return the question of repatriation to Germany. Did you discuss repatriation to Germany with Mr. Nance at that time? A No. Mr. Nance may be a little hazy about this, Mr. Mann. It is only a ride of two blocks from the police station—it was only a ride of two blocks
244 from the police station to our apartment; and I was still so upset about the prison, the night I had spent in the prison. Besides, I never knew that it was possible at the time of war—the shipping difficulties involved—that German Nationals could be shipped to Germany. I never knew that repatriation, as it was called, was possible.

Q When did you know that this was possible? A After Mr. Oehmichen called me from Ellis Island. That was the first time.

Q Now, Mrs. Oehmichen, did you ever have a conversation with Mr. Nance or with others at which Mr. Nance was present when the question of repatriation was discussed? A Yes.

Q When was that? A Mr. Nance called me to come to the FBI office on a Saturday morning. Now, during that week, Mr. Oehmichen must have signed the repatriation slip, in case he would be interned. And on Friday night, Mr. Nance called me to come to the FBI office on Saturday morning; and I went there; and Mr. Nance said: Mrs. Oehmichen, when did you see Mr. Oehmichen the last time?

I said: Last Monday.

And Mr. Nance said: Did Mr. Oehmichen talk with you about repatriation?

245 I said: No.

And he said: And in the meantime, another gentleman had come in, and he was walking in back of us.

I said: No, Mr. Oehmichen has not talked to me about repatriation.

And he said: Well, Mr. Oehmichen wants to be repatriated.

They were both very upset about this.

I said, I didn't know about this.

And Mr. Lord, the gentleman who walked in back of us was Mr. Lord, the United States Attorney; and he had come down to the FBI office to question me about this repatriation. And he said to me: People like you don't belong to Germany.

I said: Well, if Mr. Oehmichen wants to go, he only wants to go to be free.

And Mr. Lord said: There is no freedom in Germany.

And I said: Well, for Mr. Oehmichen, there wouldn't be barbed wire.

And Mr. Lord then said: If you want to, we are planning to establish family camps, and if you want to, you

can later join Mr. Oehmichen and you could be together.

That was the end of that conversation.

Q Mr. Nance testified yesterday, as you heard, that when he came to your apartment on the late afternoon or night of March 2, to make the arrest, that you and Mr. Oehmichen were expecting him. Were you? A No.

* * * * *

246 Q Mr. Nance testified that you and Mr. Oehmichen seemed to be expecting him. Were you expecting him? A No. It came as a complete shock.

Q Were you surprised? A Yes.

Q Mrs. Oehmichen, do you own a farm in Germany? A Yes, I do. I did. Yes, I do. I still do.

Q Did you own that farm in Germany at the time you spoke to Mr. Nance? A Yes.

Q Tell us, Mrs. Oehmichen, why you did not declare your intention to become a United States citizen at the same time that your husband did, that your late husband did? A I wanted to sell that farm; but we felt—at the time, I had not inherited it yet. My father was still alive. We wanted to have that farm. But the German Government was very—treated American property in Ger-
247 many differently from German property. And this was what they call erbhof. It was a small farm which really could not be sold. They wanted the farmer families to keep on tending that farm, and these little farms should not be an object of speculation. That really was the reason of it. And we felt it would be better for me to keep my German citizenship in order to get ahold of this farm, and then I could sell it. As an American, I could never get it; I could never inherit it because it was an erbhof. This was a new law passed under Hitler which upset the trading in all the small farms. They could not be sold any more. No mortgages could be issued on these small farms. They wanted farming population to be secure and to keep that, and they didn't want to make anyone who inherited it sell it.

Like so many farm people go to the city, and farms are being sold, and there were not enough farmers to tend. That is apparently what they wanted to do.

Q You did inherit the farm? A Yes.

Q Did you sell it? A No; it is still in the Russian Zone of Germany.

Q Why haven't you sold it? A I couldn't. I can't sell it. I mean, you can sell it, but you don't get anything.

Q Mrs. Oehmichen, did you ever hear your husband say whether he would or would not fight for the United States? A Yes.

248

Q What did he say? A Mr. Oehmichen—we discussed this very often; and Mr. Oehmichen was willing to fight for the United States; and he stated that unconditionally at the hearing in the presence of Mr. Lord.

Q Had he previously stated it unconditionally in your presence? A Yes.

Q Mrs. Oehmichen, I believe at the time of your arrest certain members of your family lived in Germany; is that correct? A Yes.

Q Do you now have any close relatives living in Germany? A No.

Q Where are they? A They are all in this country. I brought them all over.

Q You brought them here? A Yes.

Q Tell us who you have brought? A It is my father, who is eighty-four years old, my sister and her husband and their little boy, and another sister.

249

Q Mrs. Oehmichen, the property that was vested by the Government and described in Plaintiff's Exhibits 1, 2 and 3, which you may remember as the vesting orders, was that all of the property that you and Mr. Oehmichen had in the United States except for your household furnishings? A Yes, that is true.

Q Except for this farm, did you have any property anywhere else, except the clothes on your back and personal effects? A No.

Q Mrs. Oehmichen, when you returned to the United States, how did you manage to financially get your business going again? A Mr. Oehmichen's sister loaned me some money.

Q Now, Mrs. Oehmichen, Mr. O'Rourke, in his testimony yesterday, stated that he had no knowledge of Mr. Oehmichen being treated for an illness at Crystal City. Was Mr. Oehmichen treated for an illness at Crystal City? A Yes. He was not exactly treated, Mr. Mann. He was in the hospital for observation. There is no real treatment against this illness. They found out the illness, and they could prescribe the diet, but there is no treatment.

250 Q There is no treatment? A No.

Q Was this the illness which eventually caused Mr. Oehmichen's death? A Yes. Mr. Mann, I would like to say that I do not feel that the internment or the Department of Justice caused Mr. Oehmichen's death. This illness was in Mr. Oehmichen, as far as the doctors told me, when he was born. When he was a little baby, the tendency towards this illness was already in him. He might not have died quite so soon, but that was in the family.

*Plaintiff's Exhibit 4*

**TRIPLICATE**

(To be given to declarant when originally issued, to be made a part of the petition for naturalization when petition is filed, and to be retained as part of the petition in the records of the court)

# UNITED STATES OF AMERICA

## DECLARATION OF INTENTION

(Invalid for all purposes seven years after the date hereof)

No. 95227

United States of America

In the District Court

District of New Jersey

of the United States at Newark, N. J.

(1) My full true and correct name is HELMUT MAX [illegible]

(2) My present place of residence is 67 South Munn Ave. East Orange, N.J. My occupation is Importer-Importer

(4) I am 33 years old. (5) I was born on April 15th, 1904 at Frankfurt a/Main, Germany

(6) My personal description is as follows: Sex Male color White color of eyes Brown color of hair Brown height 6 feet 0 inches weight 200 pounds visible distinctive marks None

race German, present nationality German

(7) I am married, the name of my wife or husband is Anni Helene

she was born at Hamburg Germany and was married on Mar 9, 1935 at London England on October 7th 1904 she arrived the United States at New York New York on November 11, 1938 for permanent residence in the United States, and now resides at East Orange New Jersey

(8) I have [illegible] children, and the name, sex, date and place of birth, and present place of residence of each of said children who is living, are as follows:

(9) My last place of foreign residence was Kobe Japan

at San Pedro California under the name of Richard Max Schmidtchen

on March 15th 1933 on the Siberia Maru

(10) I emigrated to the United States

(11) My lawful entry for permanent residence in the United States was

(12) Since my lawful entry for permanent residence I have [illegible] been absent from the United States [illegible] for a period of 6 months or longer, as follows:

| DEPARTED FROM THE UNITED STATES | | | RETURNED TO THE UNITED STATES | | |
|---|---|---|---|---|---|
| Port | Date (Month, day, year) | Vessel or Other Means of Conveyance | Port | Date (Month, day, year) | Vessel or Other Means of Conveyance |
| New York | 6/24/1933 | Albert Ballin | New York | 11/11/38 | Conte Biancamano |

*Plaintiff's Exhibit 5*

TRIBUNE MARCH 6-42

# McGovern, Hague Aid, To Be Put on Tax Board

## Mayor Moves to Forestall Ouster by Edison

*Special to the Herald Tribune*

JERSEY CITY, March 5.—Mayor Frank Hague of Jersey City announced today that Philip F. McGovern, Deputy Hudson County Register of Deeds and Records since 1938, will be appointed to the Jersey City Board of Tax Commissioners by the City Commission on March 17.

Since both jobs pay $6,000 a year, the appointment will preserve the income and political standing of Mr. McGovern, a stalwart in the Hague machine since 1917. He faced dismissal by James F. Murray, a Hague foe whose appointment to the vacant Register's post was announced in Trenton yesterday by Governor Charles Edison.

# U-Boat Skipper In World War

F. B. I. men, acting with local police, arrested Wulf in the offices of his shipyard, where he makes speedboats and has been angling for defense contracts. In his possession was found a chart of New York Harbor, an old German marine flag, and a Nazi naval emblem.

According to the F. B. I., Wulf had sought to obtain contracts from the United States Navy for construction of a type of small, fast boat, which he asserted was "unsinkable." The boat would be capable of carrying a cargo of 15,000 pounds and was suggested for use in supplying fuel and bombs to seaplanes. The Navy did not accept Wulf's offer.

Wulf has been building speedboats at the plant for several years, and two of his boats are said to be in current use by the Marine Division of the New York Police Department.

During the World War he entered the German Navy at the age of seventeen, and a year later was commander of a submarine. After the war he was master of a mine sweeper in charge of clearing the mined waters of the North Sea.

According to F. B. I. agents, it is illegal for an enemy alien to possess a chart of an area such as New York Harbor. Wulf maintained, they said, that he used the chart to instruct purchasers of his speedboats in navigating the harbor waters. Wulf was sent to Ellis Island for questioning by the Enemy Alien Board.

Oemichen was arrested at his home with his wife, Anni, who was subsequently released. Said to be a

*Plaintiff's Exhibit 6*

3/5/42

rk Times

# 33 ALIENS SEIZED IN YORKVILLE RAIDS

## 3 Italians and 30 Germans Are Taken in Surprise Visits by Federal Agents

## MANY CAMERAS FOUND

## Weapons and Chemicals Used in Compounding Explosives Also Confiscated

Surprise raids on 350 places occupied by enemy aliens in Yorkville, the upper East Side German-American community, resulted

Other articles brought in by the G-men were binoculars, including a pair branded by the United States Navy, a motion picture projector of amateur type, and a number of organization emblems whose predominant feature was the Nazi swastika. The uniform cap of a Stahlhelm member was in the lot, besides the uniform of a member of the Ordnungs Dienst, storm troopers of the German-American Bund.

Mr. Foxworth said the raids had been carried out quietly and without disturbance. Only three of those picked up were Italians, while two of the thirty Germans were women. The round-up brought the number of enemy aliens taken into custody here to 675, including 262 Germans, 317 Japanese and 96 Italians.

Those arrested Tuesday, like their predecessors, were taken to Ellis Island to await the ruling of Attorney General Francis Biddle.

### Spy Suspects Seized in Jersey

Special to THE NEW YORK TIMES.

RED BANK, N. J., March 4—Eight persons have been placed under arrest as suspected spies and materials believed intended for sabotage were taken as nineteen Monmouth County places were raided by Federal agents, it was announced today by an authorized agent for H. E. Conroy, special agent in charge of the Newark FBI office.

Raids were conducted in Red Bank, Oceanport, West Long

*ENEMY ALIEN ROUND-UP*

# East Orange Pal Of Von Ribbentrop Arrested

EAST ORANGE — Erhard Max Oehmichen, member of a wealthy German family with close personal contacts in Japan and the Far East, who has often boasted of his close relationship to German Foreign Minister Joachim Von Ribbentrop, is being held at Ellis Island as a dangerous enemy alien, it was learned here last night.

FBI agents and local detectives raided his home, at 67 South Munn ave., Monday night and took both him and his wife, Mrs. Anni Helene Oehmichen, into custody. After a hearing before a federal attorney, he was sent to Ellis Island. His wife was released. At her home last night Mrs. Oehmichen refused to discuss the raid. Both are German nationals.

The couple are reported to be wealthy. They own an airplane and several cars. Oehmichen is an expert photographer. He took extensive movies of his travels throughout the Far East and Europe. He also is known as a sportsman who made frequent hunting and skiing trips.

Oehmichen was the agent in the United States for many German concerns, including the world-famous Asbach Brewery. He was sole distributor here for the brewing concern owned by Von Ribbentrop's father-in-law.

E. E. Conroy, special agent in charge of the New Jersey FBI, refused to comment.

Oehmichen is the son of a wealthy German family reportedly closely connected with the Hitler regime. In 1923, he went to the Far East. He set up an import-export business in Shanghai, China. He made extensive Japanese connections which enabled him to gain special privileges in Japan, ordinarily not extended to foreigners. He learned to speak the Japanese language.

In 1933, he visited the United States for the first time on a trip to England with his bride-to-be. He spent some time here with relatives and friends and then continued on to London, where he was married. He visited France and Germany

(Continued on Page Two)

## *Von Ribbentrop Pal Arrested In E. Orange*

(Continued from Page One)

on his honeymoon and obtained agencies for certain brewing interests. He returned here and opened an office in Chicago. This turned out an unsuccessful venture and he transferred his activities to New York.

He went back to Germany in 1935 and secured further agencies for his business here. On this trip, he reportedly contacted many high government officials through Von Ribbentrop.

On his return here he incorporated the Rhine-Bavarian Corporation in New Jersey, whose sole business was to import products of German brewing houses.

When the New York World's Fair opened in 1939, Oehmichen opened the Casino of Nations, one of the largest restaurants and night clubs on the fairgrounds. He was backed in this venture by several large German brewing concerns he represented. The main office for the restaurant operating corporation was in the German consulate in New York City.

After the fair closed in 1940, Oehmichen secured further backing from the same German interests and organized the United States Import and Export Corporation, with offices in Newark. This venture prospered until the start of the war.

(p. 131)

(PLAINTIFF'S Exh. 7)

*Plaintiff's Exhibit 8*

OEHMICHEN, Erhard Max E.Z.FileNo
C.O.FileNo 99613/756

U.S. DEPARTMENT OF JUSTICE.
Immigration and Naturalization Service

PETITION FOR REPATRIATION

To the Honorable The Secretary of State—
To the Honorable The Attorney General—

I, Erhard Max OEHMICHEN who was born at TRONITZ/Saxony a national of GERMANY on April 18th 1902 and who has last resided in my native country at HAMBURG having been arrested in the United States of America as an Alien Enemy, respectfully petition that I be repatriated—

1. In the event of my internment.

My occupation is—IMPORTER and EXPORTER

Should this petition be granted, I further petition that the following members of my immediate family accompany me to my native land—

| *Name* | *Relation to me* | *Age* | *Birthplace* | *National of* | *Occupation* |
|---|---|---|---|---|---|
| Anni H. Oehmichen, | wife | 37 | Hamburg | Germany | housewife |

The above-named persons now reside at 67 South Munn Ave., East Orange, N. J.

1. 67 South Munn Ave., East Orange, New Jersey

/s/ Erhard M. Oehmichen
Signature of Petitioner

*Plaintiff's Exhibit 9*

LUDWIG L. SIMON, M. D.
201 Ferry Street
Newark, N. J.

July 21, 1942.

To whom it may concern:

This will attest that the bearer of this letter, Mrs. Annie Oehmichen of #67 South Munn Avenue, East Orange, presented herself for examination at my office this afternoon.

The patient complained that since February 1942 she had lost twenty five pounds, that she suffered from intractable insomnia, severe spells of nervousness, irritability and tremor. Furthermore, that she was plagued with severe headaches and dizziness. That she is unable to perform any work whatsoever, even her own housework. She has never been sick before in her life except for an attack of cerebrospinal meningitis which, she asserts, she contracted in Kobe, Japan, in 1931. She further states, that she seems to have made a fairly good recovery from this illness except for occasional severe headaches. The patient ascribes her attacks to the separation of her husband, who, I understand is now confined to Ellis Island as an enemy alien.

On physical examination it became evident that the patient had endured much sufferings and mental tortures. Her weight was 125 lbs an abberation from the normal of 158 lbs for her height to some twenty three pounds. Her facies was anxious and her face deeply lined with wrinkles. Weight loss was evidenced by looseness and flabbiness of her skin. Her knee jerks were hyperactive. There were marked tremors of both upper extremities. The eyegrounds were slightly injected. The remainder of her physical examination was essentially negative.

(9) My last place of foreign residence was [redacted] Japan (10) I emigrated to the United States

at [redacted] California (11) My lawful entry for permanent residence in the United States was

at [redacted] on the [redacted] under the name of [redacted]

(12) Since my lawful entry for permanent residence I have not been absent from the United States for a period of 6 months or longer, as follows:

| DEPARTED FROM THE UNITED STATES | | | RETURNED TO THE UNITED STATES | | |
|---|---|---|---|---|---|
| Port | Date (Month, day, year) | Vessel or Other Means of Conveyance | Port | Date (Month, day, year) | Vessel or Other Means of Conveyance |
| New York | 6/[illegible]/1933 | Albert Ballin | New York | 11/11/[illegible] | Gerolstein |
| | | | | | |
| | | | | | |

(13) I have [redacted] heretofore made declaration of intention No. [redacted] on [redacted] in the [redacted]

(14) It is my intention in good faith to become a citizen of the United States and to reside permanently therein (15) I will, before being admitted to citizenship, renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which at the time of admission to citizenship I may be a subject or citizen. (16) I am not an anarchist; nor a believer in the unlawful damage, injury, or destruction of property, or sabotage; nor a disbeliever in or opposed to organized government; nor a member of or affiliated with any organization or body of persons teaching disbelief in or opposition to organized government. (17) I certify that the photograph affixed to the duplicate and triplicate hereof is a likeness of me and was signed by me.

I do swear (affirm) that the statements I have made and the intention I have expressed in this declaration of intention subscribed by me are true to the best of my knowledge and belief. SO HELP ME GOD.

Erhard Waldemar

Subscribed and sworn to (affirmed) before me in the form of oath shown above in the office of the Clerk of said Court, at [redacted], N. J.

this [redacted] day of [redacted] anno Domini 19[redacted] I hereby certify that Certification No. [redacted] from the Commissioner of Immigration and Naturalization, showing the lawful entry for permanent residence of the declarant above named on the date stated in this declaration of intention, has been received by me, and that the photograph affixed to the duplicate and triplicate hereof is a likeness of the declarant.

[SEAL]

Benjamin F. Lorenz,

[illegible] U.S. District Court

By K. A. McSurly

Deputy Clerk

Form N-315

U. S. DEPARTMENT OF JUSTICE

IMMIGRATION AND NATURALIZATION SERVICE

(Edition of 1-13-41)

[illegible] 1941 U. S. GOVERNMENT PRINTING OFFICE

McGovern, a stalwart in the Hague machine since 1917. He faced dismissal by James F. Murray, a Hague foe whose appointment to the vacant Register's post was announced in Trenton yesterday by Governor Charles Edison.

# U-Boat Skipper In World War Taken by F.B.I.

## Boat Builder Seeking Navy Work Seized in Newark With Ribbentrop Friend

*Special to the Herald Tribune*

NEWARK, N. J., March 5.—A World War U-boat commander and a representative of German brewing firms said to be a friend of Joachim von Ribbentrop, German Foreign Minister, were among nineteen enemy aliens arrested on Tuesday night in the area of Fort Monmouth and Fort Hancock, it was disclosed today by agents of the Federal Bureau of Investigation here.

Hans D. Wulf, president of the Red Bank Marine Works in Red Bank, N. J., was the U-boat commander, and Erhard Max Oehmichen, of 67 South Munn Avenue, East Orange, was the brewery representative arrested.

war he was master of a mine sweeper in charge of clearing the mined waters of the North Sea.

According to F. B. I. agents, it is illegal for an enemy alien to possess a chart of an area such as New York Harbor. Wulf maintained, they said, that he used the chart to instruct purchasers of his speedboats in navigating the harbor waters. Wulf was sent to Ellis Island for questioning by the Enemy Alien Board.

Oemichen was arrested at his home with his wife, Anni, who was subsequently released. Said to be a member of a wealthy German family, he operated an exporting firm in China, with a branch in Japan, before coming to the United States in 1933, after repeal of the Eighteenth Amendment.

He served for two years as agent of various German breweries, and in 1935 returned to Germany to negotiate the agency for the Ansbach Brewery. The daughter of the owner of the Ansbach Brewery is the wife of Ribbentrop, and Oemichen was said to have been a friend of the German Foreign Minister.

In 1939 Oemichen formed the Rhine-Bavarian Corporation to represent German breweries at the New York World's Fair, and operated the Casino of Nations there, backed by German brewing interests.

Surprise raids on 350 places occupied by enemy aliens in Yorkville, the upper East Side German-American community, resulted Tuesday night in the arrest of thirty-three persons and the seizure of much contraband material, it was revealed yesterday by P. E. Foxworth, local chief of the Federal Bureau of Investigation.

The success of the sudden search was made particularly striking by Mr. Foxworth's statement that the raids were made more or less at random, instead of, as heretofore, on information received from official or private sources. Among the articles seized were many cameras and short wave-equipped radios, one fine photographic enlarger, a modern, compact radio transmitting and receiving apparatus, sixteen rifles, five pistols, a blackjack, a vicious trench knife, a Sperry "marching compass" and chemicals capable of being compounded into explosives.

announced today by an authorized agent for E. E. Conroy, special agent in charge of the Newark FBI office.

Raids were conducted in Red Bank, Oceanport, West Long Branch, Deal, Ocean Grove, Asbury Park and Neptune. Three shotguns, two high-powered rifles, five revolvers, a dagger, three bayonets and a sword were seized.

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### Exporter Held in East Orange

Special to THE NEW YORK TIMES.

EAST ORANGE, N. J., March 4—Reputed to be a wealthy importer and exporter, Erhard M. Oehmichen, 39 years old, of 67 South Munn Avenue here, was in custody of the FBI today, charged with being a dangerous enemy alien. He and his wife Anni, 37, were arrested at their home yesterday, but she was later released after questioning. It was reported that the couple owned an airplane and several automobiles.

E. E. Conroy, head of the Newark office of the FBI, declined to discuss the background of Mr. Oehmichen, but East Orange authorities said he had been president of the corporation that operated the Casino of Nations at the New York World's Fair, the offices of which were listed at the same address as the German Consulate in New York City.

It is my conclusion that this woman due to her harrowing experiences has and is suffering from a persecution neurosis which, if left neglected would result in a severe nervous breakdown with resultant confinement to a mental institution.

Respectfully submitted,

/s/ Ludwig L. Simon, M.D.

*Plaintiff's Exhibit 10*

LUDWIG L. SIMON, M. D.
201 Ferry Street
Newark, N. J.

August 31, 1942.

To whom it may concern:

I have on this day examined Mrs. Annie Oehmichen of #67 South Munn Avenue, East Orange, N. J.

She was confined to bed at her residence and appeared acutely ill, dull, listless, apathetic and worn out. Her temperature at that time was 101°, her pulse rate 90. She complained specifically of pain directed to the left lower abdomen, accompanied by weakness, headaches, chills and dizziness. Pelvic examination revealed her to be afflicted with an acute left salpingo-oophoritis complicated by a low grade pelvic peritonitis. She also seemed to have undergone severe mental strain and some emotional upsets. It was obvious that she had lost some more weight in addition to the 30 lbs. previously alleged. Absolute bed rest and appropriate medication were ordered. Transfer to a sanitarium was also advised as soon as her condition makes it advisable to move her.

The aforegoing statement is merely a medical expression of an existing illness and is no way to be construed

as a means of influencing the opinions of others or of mitigating in her behalf in her present or past difficulties.

Respectfully submitted,

/s/ Ludwig L. Simon, M.D.

*Plaintiff's Exhibit 11*

*COPY*

FRANCIS JUST M. D.
564 High Street
Newark, N. J.

This is to certify that Mrs. A. Oehmichen of 67 South Munn Ave. E. Orange N. J. has been under my care since August 22nd. She has been quite ill suffering from Influenza with severe headache, chills and fever, gastro intestinal pains and diarrhea. Recovering from this attack of gastric Influenza patient became manifestly sick with an acute inflammation of left tube and ovary, complicated by pelvic peritonitis with fever up to 104, and a rapid and wiry puls, reaching a rate of 100. The leuskocyte count was 18000. There was a change in the temperature and puls rate, great abdominal pain with nausea, local tenderness, spasm and rigidity of abdominal muscles. At the present, patient is recuperating nicely but still needs the care of a nurse.

There is no suspicion or evidence of any specific infection. Menstrual periods was always normal. Never had any discharge. A great deal of rest is essential for a permanent cure.

Sept. 25, 1942

/s/ FRANCIS JUST, M.D.

*Plaintiff's Exhibit 12*

PATRICK J. WALSH
COUNSELOR AT LAW
Department of State
Washington, D. C.

Telephone Barclay 7-4159
270 Broadway, New York
July 8, 1942

Re: ERHARD MAX OEHMICHEN
German Enemy Alien

Gentlemen:

I, Erhard Max Oehmichen, having been ordered to be interned after a hearing before a Board in Newark, N. J., respectfully request that I and my wife, Anni H. J. Oehmichen, residing at our home, No. 67 South Munn Avenue, East Orange, N. J., be granted permission to return to our native country, Germany, on the S.S. *Drottningholm* on its trip home to Sweden.

We have lived in the United States continuously since 1933. Both of us were taken into custody by the F.B.I. on March 3, 1942. My wife was released the next day and I have been at Ellis Island, New York Harbor, ever since.

I have been engaged in business in this country, being president of two corporations in Newark, N. J. and of one in New York, where I was president of the Casino of Nations, Inc., operating one of the largest restaurants at the New York World's Fair 1939-1940. I have invested my money in business in this country, up to $100,000.00 and have lost most of it.

I have filed a petition requesting that my wife and I be repatriated and if necessary will pay our own expenses. We have been informed that both of us were named on the list submitted to the Department of State by the Swiss Consulate.

One special reason for an early return is that both of us have suffered such mental and physical anguish in

the past three months by my incarceration and our separation, that I am fearful that my wife will suffer an utter collapse. She has lost 25 lbs. in weight, not one pound of which she could afford to lose. Her physical condition is pitiable, and mine, under the changed conditions under which I now have to live, is causing me great concern.

I never expected to be interned and did nothing to deserve it. I had applied for United States citizenship and intended to spend the rest of my life in the United States but to be interned for the duration of the war and separated from my dear wife and helpmate is unbearable to both of us.

I beg of you to save me and my wife from further separation, misery and hardship and permit us to return to Germany on the Steamship Drottningholm on its trip back to Sweden.

Respectfully yours,

/s/ ERHARD MAX OEHMICHEN
Erhard Max Oehmichen
/s/ ANNI H. J. OEHMICHEN
Anni H. J. Oehmichen
BY PATRICK J. WALSH
Patrick J. Walsh

Friend of E. M. Oehmichen

*Plaintiff's Exhibit 13*

MRS. E. M. OEHMICHEN
67 SO. MUNN AVENUE
EAST ORANGE NJ

July 26, 1942

Department of State
Washington D.C.

Gentlemen,

re Erhard M. Oehmichen
German Enemy Alien
Present residence:
Ellis Island N.Y.

I am writing in behalf of my above named husband and myself, his wife, both of whom applied to the Department of State by letter delivered in Washington on June 11, 1942 and on July 9, 1942 resp. requesting permission to return to Germany on the s.s. "Drottningholm" on July 15, 1942.

I enclose copies of said letters which are dated June 11, and July 8, 1942.

Permission to sail was denied for that sailing.

We now renew our application and beseech you to permit us to sail on the s.s. "Nyassa" of the Portuguese Line on her next sailing or on any ship sailing in the near future.

Both aforementioned letters contain the special reasons why we desire to return to Germany.

We will give any kind of a pledge or guarantee desired by the United States Government that we will neither do or say anything detrimental to the interests of the United States, the beloved country in which we lived happily for eight years and in which we expected to remain the

rest of our lives, but not separated as we have been since March 2, 1942.

If permission is granted to sail, we, of course, will leave all our property and possessions in this country and after this terrible conflict is over (the Immigration Authorities permitting) we will return to the United States where my husband has business interests and a sister happily married and residing in Chicago.

We have done nothing to deserve the punishment now inflicted upon us and I beg of you to relieve our suffering and grant us permission to return to Germany for the duration of the war.

I enclose photostatic copies of certificates of Doctors Simon and Bergman of Newark stating the result of their examination of me as to my physical and mental condition at this time.

May I have a reply.

Respectfully Yours

A.H.I. OEHMICHEN
(Mrs. E. M. Oehmichen)

Enclosures:

1) Cert. from Dr. Simon
2) Cert. from Dr. Bergman
3) Copy of letter June 11, 1942
4) Copy of letter July 8, 1942.

*Plaintiff's Exhibit 14*

East Orange, N. J., Sept. 2, 1942
67 South Munn Ave.

Mrs. Malvina C. Thompson
Secretary to
Mrs. Eleanore Roosevelt
White House
Washington, D. C.

Dear Mrs. Thompson:—

It is, in fact, because I myself appreciate to some little extent the nature of some of the difficulties encountered by the President, and the great burden imposed by heavy correspondence on him, that I venture to take the great liberty of asking you to look the enclosed letter over and decide the question as to whether or not it shall be allowed to come before the eye of the President himself.

If you can find time to read the enclosed letter addressed to the President, which my sick wife, Mrs. Anni H. J. Oehmichen started to write, and which due to her lapsing into unconsciousness I had to finish at my wife's bedside. I trust that you will understand and forgive this intrusion upon your goodself.

Assuring you of my profound respect and my everlasting gratitude, I beg to remain

sincerely and respectfully,

/s/ E. M. Oehmichen
ERHARD MAX OEHMICHEN

encl. letter to
President Roosevelt.

East Orange, N.J., Sept. 2, 1942.
67 South Munn Ave.

Hon. Franklin D. Roosevelt
President of the United States
White House
Washington, D. C.

Dear Mr. President:—

Between my realization on one hand of the great burden imposed upon you by your heavy correspondence, and, on the other hand, of the importance of my cause, which might mean life or death to me, I am in a dilemma the only solution for which, that occurs to me, is to take the great liberty of asking you, as the highest official of this country to kindly look into the case of either *freeing my husband,* or else *repatriating him and me,* since all other efforts of mine have failed to bring an answer to my petitions from the different government agencies.

I venture to ask this unusual kindness, because I am sincerely convinced that it can hardly be in the interest of the United States to hold innocent and sick German nationals here as hostages. In fact, I know in my heart that you as an Humanitarian would not permit such procedure.

My husband, *Erhard Max Oehmichen,* has been engaged here in business since 1933. He operated the *Casino of Nations* at the *World Fair during 1939/40* and has lost most of his money he has invested in this and other enterprises.

It is beyond my husband's and my understanding, why he should have been held at Ellis Island since March 3rd and should have been ordered interned for the duration, as he as well as I have always minded our own business exclusively. We have always been law abiding loyal resi-

dents of this country and have never done anything inimical to the interests of the United States.

And if this merits no consideration for freeing my husband, I wish to appeal to you, Mr. President, personally, to give us a chance to return to Germany on the next outgoing neutral vessel, as I have suffered a complete nervous breakdown, and since two weeks have fallen victim of peritonitis, accompanied by high fever, so that *I represent a mere shadow of my former appearance.* Herewith affidavit of Dr. M. W. Bergman, Newark, dated July 21, 1942.

You only stated again at your press conference two weeks ago that a book of reckoning would be kept, and for this same reason, I ask you to direct your instructions to the place where they will be most effective for fair play, to either set my husband free, or else, if and when I arise from my sickbed, to let us both go back to Germany to be re-united and start there life anew once more.

I know you will fully understand my solicitude and see to it that the right thing will be done.

Having been written so far by my wife, Mrs. Anni H. J. Oehmichen, she suffered a relapse into unconsciousness, for which reason I was paroled to-day from Ellis Island to her bedside, and hence have to finish this letter.

Respectfully submitted,

/s/ E. M. Oehmichen
ERHARD MAX OEHMICHEN

*Plaintiff's Exhibit 15*

East Orange, N.J., September 4, 1942
67 South Munn Ave.

Department of State
Att. Mr: Joseph C. Green
Chief, Special Division
Washington, D. C.

Dear Mr. Green:—

re: Erhard Max Oehmichen
prospective repatriant
to Germany.

I beg to refer to-day again to my previous applications for your consent to be repatriated with my husband Erhard Max Oehmichen, if there should still be neutral vessels plying between this country and neutral ports of Europe.

I wrote to President Roosevelt two days ago as per copy of letter attached, as I simply do not have the strength to carry on any longer.

Please do what you can to facilitate my husband's and my repatriation.

-:-

This letter having been written so far by my wife, Mrs. Anni H. J. Oehmichen, had to be finished by me, the undersigned, just as I had to do with my wife's letter to the President, as she is to-day betweer life and death, for which reason I was paroled again to-day from Ellis Island to my wife's bedside.

Yours very truly,

/s/ E. M. OEHMICHEN
ERHARD MAX OEHMICHEN

*Plaintiff's Exhibit 16*

Name *Oehmichen* *Anni* *Helene*
(Last) (First) (Middle)

I *do* desire repatriation to *Germany, if possible, dur-*
(do or do not) (Name of Country)
*ing the war otherwise not.*

Is spouse requesting repatriation? *same* If not, do
(yes or no)
you desire repatriation regardless of spouse's decision?
(yes or no)

If you would be accompanied by any dependents outside this camp, give their name, address and relationship.

A. H. J. Oehmichen
(Signature)

January 22, 1944
(Date)

Nationality *German* Citizenship *German*
Sex *F.* Age *39* Place of Birth *Hamburg, Germany*
Date of Birth *Oct. 7, 1904*
Residence prior to internment *East Orange, New Jersey*
Occupation prior to internment *Housewife*
Date and place of last entry into U.S. *Feb. 12, 1938*
*New York*
Status of internment *Voluntary*
(Voluntary or Involuntary)

Names of dependents residing at Crystal City who would accompany:

| Name | Age | Sex | Relationship |
|---|---|---|---|
| *See Erhard)* | | | |

*Plaintiff's Exhibit 17*

Name *Oehmichen* (Last) *Erhard* (First) *Max* (Middle)

I *do* (do or do not) desire repatriation to *Germany* (Name of Country), *if possible, during the war otherwise do not*

Is spouse requesting repatriation? *Yes, same* (yes or no) If not, do you desire repatriation regardless of spouse's decision?

(Yes or No)

If you would be accompanied by any dependents outside this camp, give their name, address and relationship.

*None*

Erhard M. Oehmichen
(Signature)

January 22, 1944
(Date)

Nationality *German* Citizenship *German*
Sex *M.* Age *41* Place of Birth *Tornitz, Germany*
Date of Birth *Apr. 18, 1902*
Residence prior to internment *East Orange, New Jersey*
Occupation prior to internment *Importer & Exporter*
Date and place of last entry into U.S. *Feb., 1938, New York*
Status of Internment *Involuntary*
(Voluntary or Involuntary)

Names of dependents residing at Crystal City who would accompany:

| Name | Age | Sex | Relationship |
|---|---|---|---|
| *Anni Helene* | *39* | *F.* | *Wife* |

*Plaintiff's Exhibit 18*

Copy (Telegram)

P85 P.NF57 N.DB203 LONG D. SJA80 SER-CRYSTAL CITY TEX 9 915A

Thorn Lord United States Attorney
Fed. Bldg. (Trenton NJ)

Feb 9 PM 12:50

HAVING BEEN RECOMMENDED FOR REPATRIATION TO GERMANY WITH A LARGE NUMBER OF GERMAN INTERNEES MR OEHMICHEN AND I ARE STILL AWAITING YOUR PERMISSION TO LEAVE WITH THEM ON ACCOUNT OF SEVERE MENTAL SUFFERINGS FOR THE PAST TWO YEARS I HEREBY WISH TO APPEAL TO YOU PERSONALLY TO IMMEDIATELY GRANT US PERMISSION TO BE REPATRIATED I. CANNOT BELIEVE THAT YOU WILL REFUSE THIS URGENT REQUEST ESPECIALLY SINCE WE HAVE APPLIED FOR REPATRIATION SUCH A LONG TIME AGO AND IT WOULD BE INHUMAN TO LET US SUFFER HERE WHEN SO MANY PEOPLE ARE LEAVING I AM SURE YOUR REFUSAL WOULD AGAIN RESULT IN A SERIOUS NERVOUS BREAKDOWN OF MYSELF FROM WHICH I MIGHT SUFFER MY WHOLE LIFE PLEASE DO INFORM THE AUTHORITIES IMMEDIATELY.

MRS. E. M. OEHMICHEN.

*Plaintiff's Exhibit 19*

Special Telegram 1944 Feb 9 PM 12:17
WU AB 25 121 SER

CRYSTAL CITY TEXAS FEB 9 915A 1944

EDWARD J ENIS
US DEPARTMENT OF JUSTICE

HAVING BEEN RECOMMENDED FOR REPATRIATION TO GERMANY WITH A LARGE NUMBER OF GERMAN INTERNEES MR OEHMICHEN AND I ARE STILL AWAITING YOUR PERMISSION TO LEAVE WITH THEM ON ACCOUNT OF SEVERE MENTAL SUFFERINGS FOR THE PAST TWO YEARS I HEREBY WISH TO APPEAL TO YOU PERSONALLY TO IMMEDIATELY GRANT US PERMISSION TO BE REPATRIATED I CANNOT BELIEVE THAT YOU WILL REFUSE THIS URGENT REQUEST ESPECIALLY SINCE WE HAVE APPLIED FOR REPATRIATION SUCH A LONG TIME AGO AND IT WOULD BE INHUMAN TO LET US SUFFER HERE WHEN SO MANY PEOPLE ARE LEAVING I AM SURE YOUR REFUSAL WOULD AGAIN RESULT IN A SERIOUS NERVOUS BREAKDOWN OF MYSELF FROM WHICH I MIGHT SUFFER MY WHOLE LIFE PLEASE DO INFORM THE AUTHORITIES IMMEDIATELY

MRS E M OEHMICHEN.
1216P.

*Plaintiff's Exhibit 20*

6-2.-44
(date)

Mr. J. L. O'Rourke
Officer in Charge
Crystal City Internment Camp
Crystal City Texas

Dear Sir:

Should a review of my case result in a decision qualifying me for a parole, you are advised that I *would not* accept same.
(would) (would not)

E. M. Oemichen
(signature)

Members of family:

*Plaintiff's Exhibit 21*

*COPY*

Chicago, Oct. 9 — 1944

Dear Erhard,

This morning the letter about the extension arrived. It would have been too bad if I had left yesterday and not wired again. I am so glad it is definite now. This morning I went immediately to the RR and fortunately got a reservation on the "Katy Flyer", leaving St. Louis Sunday night, 10.30 p.m. This train will be in San Antonio Tuesday morning 8.45 and I can then make the 2 p.m. bus, which will be in Crystal City around 6 o'clock. Could you arrange that somebody from the camp picks me up at the Drugstore then? As I have the reservations this is definite now. Too bad I could not get anything on the "Texas Special" which would only have been on the way 26 hours. But that cannot be helped. I am glad to see you again soon. What are you doing about your laundry? Could you find someone to iron? How is it to eat in the Messhall? Are you tired of it already? Are you still playing Bridge?

Today I saw the first St. Claus and the first X'mas tree in Marshall Fields. They are starting early in such things. Can you still sit outside? Or is it getting cooler there too? I have not been in a movie yet. There were too many other things going on. I may not write you tomorrow as we have the Bridal Dinner here. The fiance will arrive tomorrow morning. All that is definite too now. Rosemarie and her husband will spend their Honeymoon in Florida. She is quite excited about everything. Really, she is such a sweet girl—

What you write about repatriation is interesting, but I do not believe it. I think one should not make any decision about that when one is not free to use his own judgment. After having been interned for such a long time we

certainly have a bit of the "Barbed Wire Sickness" and see things in a distorted way. What I am worried about more is your long internment and the possible mental consequences about which Kobbe is so worred. But we will discuss all this when I am back.

You cannot imagine how happy I am to have had the chance to be here. To go free as one pleases, to ride in a car, to see the beautiful lake and all the other things certainly help to forget Crystal City Internment Camp. If you only could have been here with me everything would have been so much more fun. Today I was in the Palmer-house and thought of the times when we stayed there. Will that ever be again?

Dear, I hope to hear from you soon.

Love

Eva.

*Plaintiff's Exhibit 22*

MRS. E. M. OEHMICHEN
CRYSTAL CITY INTERNMENT CAMP
CRYSTAL CITY, TEXAS.

Oct. 24, 1944.

Mr. Edward J. Ennis,
Director Alien Enemy Control,
Department of Justice,
Washington D.C.

My dear Mr. Ennis,

I was allowed recently by our Officer in Charge, Mr. J. L. O'Rourke, and by Mr. Willard D. Kelly of the Department of Immigration and Naturalization, Philadelphia, to attend the wedding of our niece Rosemarie Rie[illegible]l in Chicago.

At that time I had ample opportunity to discuss our present state of affairs with Mr. Oehmichen's sister and

her husband, Mr. & Mrs. C. M. Riedel. I was greatly impressed with their confusion when they saw me for the first time after our long interriment, and also with the worries they have about my husband, who has been interned for almost three years now. They are very much alarmed because there is a strain of melancholy in my husband's family which caused the two brothers of my husband's mother to commit suicide at the age of 45. I became further convinced of the seriousness of their argument after my return. It is obvious that the long years of severe privation and the loss of liberty have a deep and everlasting effect on the entire life and mentality of an intelligent person. This condition is greatly enhanced by the constant thought that he has done nothing to warrant this severe penalty. Even in the Fifth Amendmert to the Constitution of the United States it is provided that a person shall not be "deprived of life, liberty or property without due process of law". We, as law abiding residents of this country are not even given the simple privilege extended to the lowest criminal, namely the presumption that he is innocent until the contrary is proven. W have been held in Concentration Camps for years now and it is clear that we are undergoing more severe punishment and more mental sufferings than a criminal who at least knows what crime he has committed to warrant his loss of freedom and punishment.

After reminiscising for almost three years now about the possible "whys" and "hows" of our present predicament the only assumption for such kind of treatment seems to be an atmosphere of witch and spy hunting during the first months of the war, or the blackmailing manoeuvres of some competitors in business, and perhaps the envy at our good fortune of a few short sighted people who were jealous of Mr. Oehmichen's success and who, under the pretense of patriotism made us easy victims who, they knew, were even denied the human right to defend themselves against any accusation.

How contrary is this to the spirit of Alexander Hamilton who wrote in one of his Camillus letters:

" There is no parity between the case of the persons and " goods of our enemies found in our country and that of " the persons and goods of enemies found elsewhere. In " the former there is a reliance upon our hospitality " and justice; there is an express or implied safe con- " duct; the individuals and their property are in the " custody of our faith; they have no power to resist " our will; they can lawfully make no defense against " our violence; they are deemed to owe a temporary " allegiance; and for endeavouring resistance would be " punished as criminals, a character inconsistent with " that of an enemy. To make them a prey is, therefore, " to infringe every rule of generosity and equity, it is to " add cowardice to treachery. . . ."

It is all the more incredible as Mr. Oehmichen with his vast experience in business, and with his knowledge, his connections and his conservatism was an asset to any community and highly respected wherever he lived. This is proven by the fact that even the Chief of Police in East Orange, New Jersey, Mr. Dell, where we lived until 1942 offered to act as a sponsor for Mr. Oehmichen.

How humane was the attitude taken against enemy aliens by President Wilson in his proclamation of April 6, 1917:

"All alien enemies are enjoined to preserve the peace " towards the United States and to refrain from crime " against the public safety, and from violating the laws " of the United States and Territories thereof, and to " refrain from actual hostility or giving information, " aid or comfort to the enemies of the United States, " and to comply strictly with the regulations which are " hereby or which may be from time to time promulgated " by the President; and so long as they shall conduct " themselves in accordance with the law, they shall be " undisturbed in the peaceful pursuit of their lives and

" occupations and be accorded the consideration due to
" all peaceful and law abiding persons, except so far as
" restrictions may be necessary for their own protection
" and for the safety of the United States; and towards
" such alien enemies as conduct themselves in accordance
" with law all citizens of the United States are enjoined
" to preserve the peace and to treat with all such friend-
" liness as may be compatible with loyalty and allegiance
" to the United States."

We have always regarded the spirit of tolerance and justice as expressed in the foregoing proclamation as the true spirit of American liberty. In confidence with this spirit we came to live here, never dreaming that we would ever be persecuted and even deprived of our liberty, which to us means more than anything else in life. The regaining of this liberty was the reason for our various requests for repatriation. However, even this repatriation was denied to us several times.

I cannot bear to see my husband being deprived of many more vital years of his life which fact already has greatly influenced him mentally; that it should have the power to destroy the life and happiness of a family for which I have to bear the greatest suffering is beyond any conception of humanity and christianity.

For all the reasons stated I herewith ask you to review my husband's case and to consider to release him as soon as possible. We have nothing to add to the various statements given to the United States Attorney, Mr. Thorn Lord, in Newark and Trenton and the Agents of the F.B.I. at several hearings and conversations. We would be willing to live in Chicago for the time being and we would also have several people who would act as sponsors for Mr. Oehmichen.

I do not think that any human being, as powerful as he may be at the present time, can take it upon his con-

science to imprison innocent people for such a length of time. And may God have mercy with him if he does.

Trusting to receive a favorable reply soon, I remain,

Very sincerely Yours

.....

(Mrs. E. M. Oehmichen)

*Plaintiff's Exhibit 23*

MRS E. M. OEHMICHEN
CRYSTAL CITY INTERNMENT CAMP
CRYSTAL CITY, TEXAS

Oct. 24, 1944.

Mr. J. L. O'Rourke,
Officer in Charge
Crystal City Internment Camp,
Crystal City, Texas.

My dear Mr. O'Rourke,

I wish to express to you my sincere thanks for having allowed me to go to Chicago recently to attend the wedding of my niece Rosemarie Riedel.

This trip gave me a good opportunity to get a good view of our predicament here. I also convinced myself that there is no hostile feeling in Chicago against residents of this country who were born in Germany.

I therefore wrote a letter to Mr. Edward J. Ennis and Mr. Lord as per copy attached which I hope will find your sympathetic understanding.

I would greatly appreciate if you could assist my endeavours by recommending my application, especially as you know the various components of this camp and the conditions under which we had to live for the last two years.

Very sincerely Yours

.....

(Mrs. E. M. Oehmichen)

Encls.

*Plaintiff's Exhibit 24*

DEPARTMENT OF JUSTICE
Washington, D. C.
25
November 7, 1944

MJP:mya
146-13-2-48-268

Mrs. E. M. Oehmichen
Crystal City Internment Camp
Crystal City, Texas

Dear Madam:

Reference is made to your letter of October 24, 1944, concerning the case of your husband, Mr. Erhard Max Oehmichen.

I wish to advise you that no change will be made in your husband's internment status at this time. However, your letter will be made a part of his file for consideration in the event that his case is re-examined at a later date.

Very truly yours,

/s/ Edward J. Ennis
Edward J. Ennis

Director, Alien Enemy Control Unit

*Plaintiff's Exhibit 25*

Telephone ORange 3-2421 New York Standard Form

Read Warehouse Rules on Back

Warehouse Receipt

Lot No. 3343 East Orange, N. J. Sept. 30 1942

SECURITY STORAGE WAREHOUSES

Operating THE ORANGE STORAGE WAREHOUSE, Inc. John O'Connor, Pres.

30-32 HARRISON STREET

Not Negotiable

RECEIVED for the account of Mrs. Ochmichen, 67 So. Munn Av., East Orange, N.J. the goods enumerated in the schedule annexed upon the following

CONDITIONS

The owner assumes all risk, and no liability of any kind attaches to the Company for damage by moth, rust, fire, or deterioration by time.

The Company is not responsible for fragile articles injured or broken unless packed by its employees, and unpacked by them at the time of delivery, and in no event shall the Company be liable except for its own negligence.

Three months storage will be charged for any fraction of the first three months.

Unless a greater value is stated herein, the depositor declares, that the value, in case of loss or damage, whether arising out of the storage, transportation, packing, unpacking or handling of the goods, and the liability of the Company for any cause for which it may be liable, for each or any piece or package and the contents thereof, does not exceed and is limited to fifty dollars, upon which

declared or agreed value the rates are based, such depositor having been given the opportunity to declare a higher valuation, without limitation, in case of loss or damage from any cause which would make the Company liable and to pay the higher rates based thereon.

All notices of change of address shall be given in writing and no notice of such change shall be valid or binding against the Company if given in any other manner.

All the above terms and conditions apply to any property hereafter stored for this account.

All charges must be paid before the delivery or transfer of goods and no transfer will be recognized unless entered on the Books of the Company.

No person is authorized to make any other agreement or condition on behalf of the Company.

The rate of storage on this lot is $11.00 per month.

Security Storage Warehouses

By /s/ John O'Connor

SCHEDULE

If not correct, please report immediately

(B. O. Means Bad Order) (O. R. Means Owner's Risk)
(S. & M. Means Scratched and Marked)

| | | | |
|---|---|---|---|
| 1 | Day Bed | 12 | Teakwood Stand |
| 2 | " " Cushion | 13 | Folding Table |
| 3 | Barrel | 14 | Carton |
| 4 | " | 15 | Coffee Table BO |
| 5 | Radio | 16 | Wastebasket |
| 6 | Wood Seat Arm Chair | 17 | Edle Wastebasket (2) |
| 7 | Occ. Chair | 18 | Basket |
| 8 | Uph Arm Chair | 19 | Glass Tray OR |
| 9 | Mag Stand S&M | 20 | Paper Package |
| 10 | " " S&M | 21 | Leather Case |
| 11 | " " S&M | 22 | Occ Chair |

23 Beach Umbrella
24 Metal Chair
25 Garbage Can
26 Wash Machine
27 Box Picture
28 Card Table
29 Carton
30 "
31 "
32 "
33 "
34 "
35 Rug
36 Small Rug
37 Davenport
38 Bdle Coat Hangers
39 Bread Box
40 Breakfront
41 Com Radio & Victrola
42 Carton
43 Occ Chair
44 Frigidaire S&M
45 Large Wardrobe S&M
46 Leather Case
47 Roll Map
48 Bdle Curtain Poles
49 G F Clock BO
50 Elec Floor Lamp
51 " " "
52 " " "
53 Bdle Skies
54 " "
55 " "
56 Metal Chair
57 Metal Chair
58 Teakwood Stand
59 Tea Wagon S&M
60 Carton
61 "
62 "
63 "
64 "
65 Hamper
66 Vacuum
67 Floor Waxer
68 K Table Top Chipped
69 Small Rug
70 Barrel
71 Cushions
72 Dishpan & Cont
73 Bear Skin
74 Exc Machine
75 Iron Stand
76 Side Table S&M
77 Bdle Table Legs
78 Rug
79 Ozite
80 Rug
81 Large Trunk
82 " "
83 Trunk
84 "
85 "
86 Large Cedar Chest
87 Barrel
88 "
89 Barrel

Agents for Allied Van Lines—Nation Wide Long Distance Moving.

# WAREHOUSE RECEIPT

*Security Storage Warehouses*

Operating The Orange Storage Warehouse, Inc.

30-32 HARRISON STREET
EAST ORANGE, N. J.

## Warehouse Rules

Present this Warehouse Receipt and a written order when any goods are to be withdrawn.

Reasonable notice is required for access to or delivery of goods.

Access to goods by appointment 8 to 12 A.M. and 1 to 4 P.M.

Warehouses close at noon on Saturdays throughout the year.

A labor charge will be made for handling of and access to goods in the Warehouse.

This Warehouse Receipt should be returned when all the goods enumerated in the Schedule are withdrawn.

No intoxicating beverages will be accepted for storage or handled by the Company.

Storage charges are quoted on a monthly basis, and one months charge will be made for any fraction of one month.

A labor charge equivalent to one month storage will be made when goods are removed by vans other than those of the Company.

Polizeigefängnis Bregenz

Bregenz, den 6.7.1945.

# B e s t ä t i g u n g .

Herrn O e m i c h e n Erhard, geb. am 18.4.1902, wohnhaft in New-York/USA. wird bestätigt, dass er am 25.4.1945 im Auftrage der Gestapo bzw. des Stadtkommandanten von Bregenz als politischer Häftling (Geisel) festgenommen und in das oben angeführte Gefängnis eingeliefert wurde. Seine Freilassung erfolgte am Vortage des Einmarsches der französischen 1. Armee, das war am 30.4.1945.

Gefangenen Nr. 682.

der Kreisstadt Bregenz

Plaintiff's Exhibit 26

160

*Plaintiff's Exhibit 26*

TRANSLATION

Polizeigefaengnis Bregenz Bregenz, July 6, 1945.

*Confirmation*

We herewith confirm to Mr. Oehmichen, Erhard, born on April 18, 1902, of New York U.S.A. that he was arrested as a polftical prisoner (hostage) by order of the GESTAPO and the Town-Commandant of Bregenz and that he was delivered into the above-named prison. His release was effected the day before the arrival of the First French Army, that was April 30, 1945.
Prisone:'s No. 682

stamp: Polizeigefaengnis
Bregenz
signed: Lomberger

*Plaintiff's Exhibit 27*

Copy

OFFICE OF MILITARY GOVERNMENT FOR
GREATER HESSE
Economics Division
APO 633

30 Jan 47

TO: Mr. Erhard Oehmichen

My dear Mr. Oehmichen,

I feel that it is time to voice the appreciation of the Economics Division of the Office of Military Government for Greater Hesse for your outstanding accomplishment in the planning, development and continued management of the Landesausstellung for Gross Hessen, and for the splendid work on the compilation of the "Buyers Guide".

We are fully aware of the multitude of difficulties and obstacles you had to overcome in this work and it is only fair to voice our commendation of the manner in which you have carried out the whole program.

While the great effort in planning and execution of the Export Program is basically a German problem and responsibility, it has been and continues to be a matter of great interest to U.S. Military Government to assist in every proper way this effort. Throughout the past 6 months, you have given this Division every possible assistance within your power. I am sure that the Land Ministry of Economics and Transport will fully concur in our commendation.

Since the function of this Division in Military Government is to advise and assist the Land Ministry in the broad field of economics, as well as to interprete [sic] the broad policies laid down by the occupying powers, it has been a matter of gratification to us to have the assistance in building up the Trade and Industry Exposition which you have provided. Your understanding of the mutual problems of Military Government and the German Land Ministry has been extremely helpful.

Wishing you continued success in your efforts,

/s/ Stanley H. Sisson
STANLEY H. SISSON
Director

*Plaintiff's Exhibit 28*

Telephone: Wiesbaden 8341 ext 260
8641

Cable Address: JEIAHES Wiesbaden

Office of Military Government for Hesse
Economics Division

Branch Office JOINT EXPORT-IMPORT AGENCY
(U.S./U.K.)
Wiesbaden, Germany
APO 633, U. S. Army

Wiesbaden
15 Dec 47

SUBJECT: Letter of Commendation

TO: Mr. Erhard M. Oehmichen
Hessische Exportschau
Kirchgasse
Wiesbaden

1. Upon the occasion of my departure for duty in the United States may I commend and thank you in the very highest terms for your splendid, untiring and unselfish efforts in establishing the Hessian trade and export exhibitions.

2. I know that you gave without stint your time, energy and even health in overcoming the very great difficulties with which you were confronted. The success of your efforts is known and acclaimed throughout Germany and the various countries in Europe.

3. By your efforts you have rendered valuable service to me personally and to the Trade & Commerce Branch, Office of Military Government for Hesse and thereby to the entire Military Government program for German exports.

4. My very best wishes and may good fortune be yours in all your undertakings.

/s/ Leo Mandell
LEO MANDELL
Chief
Trade & Commerce

*Plaintiff's Exhibit 29*

E. M. OEHMICHEN
C/O COUNTESS OF ZEPPELIN
PFAENDERWEG 166,
BREGENZ-AUSTRIA August 21, 1945.

Dear Martin and dear Kaethe,

We hope you have received our first letter and have already started actions on our behalf. We are dreadfully eager to get back to the States, to you and to all our belongings. We feel we do not belong here at all and the six months that we are here have just been one dreadful nightmare. I wrote you already that Erhard was imprisoned by the Gestapo here and what a bad time he had. It is a wonder that he came out alive with what we hear here about the Concentration camps and with what happened to Erhard in the prison.

I am enclosing copies of letters which I sent to Mr. Collaar who used to be the Officer in Charge in Crystal City and who is now an official at the Dept. of Immigr. in Philadelphia, and to Miss Hersey, who is the Assistant to the Commissioner in the same Department and who did a lot for special hardship-cases. She is a buxom jewish woman, very kind-hearted and friendly. She always hailed us and liked to talk to us when she was in the camp, only we had to be so careful later on because of the talking of the people and their gossiping. If

Rosemarie alone or together with Anita could go there and talk to all three of them (including Mr. Kelly). I think we would have a good chance to get our Re-Entry Permit. They should refer to the letter we wrote these officials through the American Commissioner of Immigration in Bern/Switzerland and also through the American Military Authorities here. That letter should tell them enough. Also Rosemary could give the conversation a little private touch by telling them that it was her wedding I attended in October. I am also enclosing copy of the letter I wrote to Mr. Kelly, all letters are about alike and give a clear picture of our cases. Please write us soon what you did, as we are so anxious to hear from you. Make different copies of your letters and send one to the address mentioned on the outside of the envelope, another one to Frau Fina Lanz, Handlung, St. Margrethen, St. Gallen, Switzerland. Try to get another one to us c/o Mr. F. Wilhelm, Schlueterstrasse 54 a, Hamburg. I do not know how, may be you can send it through the American Consul in Frankfurt and he in turn can send it through the American Liaison Officer with the British Government in Hamburg. It is terribly difficult to write and receive letters today, but somehow we must manage. I want the copies sent to the different addresses because we may be leaving here before the winter. There is a tendency among the population of Austria to get all the Germans out of Austria and we might decide to leave too, if we have a chance to get a truck, because we do not wish to loose our luggage which we have saved so far. It also might be better to go to Hamburg because of the Food-Situation. We have not received any potatoes since June 22, hardly any vegetables and no fruit, because Austria does not produce much. We are exchanging all our old clothing for edibles and we can do the same thing in Hamburg. The Buergermeister here has confiscated the luggage of all the people who came with us and who mostly left immediately for places in

Germany with the promise that their luggage would be sent within the next week. That could not be done at the time because of the bombings and instead the truncks were stored in a big school. Now, a few weeks ago everything was confiscated and distributed among the population here. It was brought over from the United States by the U.S. Army without a scratch and here it is stolen by the own government.

Since I started this letter the situation has changed. We are leaving beginning of next week for Hamburg. However you can still send a copy of your letter to St. Margrethen in Switzerland as we have a chance to get letters from there.

We are also very anxious to know how you all are. What did you hear from Hugo and where is he? Can't you write him to get in touch with us. We should so like to see him sometime. We certainly are glad the war with Japan is over too, so that this dreadful nightmare is at an end. You cannot imagine how dreadful war is and how terrible the lot of the women is here. Most of them have left their homes because of the bombings, in most cases they have not heard from their husbands for 6 months, they do not know whether they are alive or dead, the husbands cannot find their families after the release from the Army or after coming home from the Prisoner of War Camps. It is heart breaking. And there is no way of communication.

In our last letter we asked you to try to remit sfrs. 1,000.— to us. If you have not already done so you may disregard this request as we are leaving here and do not need the money anymore.

Also, please write Mr. Kelly, Miss Hersey and Mr. Collear of our change of address. The best for them probably will be to write us through the American Consulate in Frankfurt, they in turn will send mail to the American

Liaison Officer attached to the British Forces of Occupation in Hamburg. I hope this will work, as we are very anxious to get an answer to our various letters.

I hope this is not confusing, but the situation changes from day to day and we have to adjust ourselves accordingly. So it is all clear to you: We are leaving for Hamburg, mail for us from the U.S. Officials should be send to the American Consul in Frankfurt, *you* should make various copies of your letters, and send one letter to Hamburg (also through the American Consul) then a copy to Mrs. Fina Lanz in St. Margrethen. That is all clear I hope.

If Rosemarie and Anita are going to Philadelphia they should at the same time see Mrs. Wessel and also Mr. Lord in Newark. He is very important. And he should get an impression from them what kind of family we are.

*Plaintiff's Exhibit 30*

Erhard M. Oehmichen
Schlueterstrasse 54 a,
Hamburg - Rotherbaum.

Oberstaufen, 25.9.1945.

Dear Rosemarie,

Thanks a lot for everything you did in Newark and Philadelphia for us. May I suggest the following plan of action:

1. Keep in contact with Mr. Kelly and Mr. Collear, who are the most important persons for getting our Re-Entry Permit.
   We have made formal application for the Reentry-Permit through the American Commissioner of Immigration attached to the American Embassy in Bern/Switzerland and have sent letters to Mr. Kelly,

Mr. Collear and Miss Hersey through him. Miss Hersey is the Assistant of the Commissioner of Immigration.
We have sent the same letters through Major Bradbury, who is the American Liaison Officer with the French Forces in Bregenz, Austria.
These letters should be there at about the same time. What we need is the assurance, that the Re-Entry Permit is issued and that we will be admitted into the United States at our arrival there. If this can be achieved and we are informed about it we will find a way to come over on a boat from Hamburg or Bremen as soon as possible. This is the main problem, we do not hope we have to re-enter on a new quota, as we have been living in the United States for so long and they know everything about us already. On my former visits from the United States it was possible to have the Re-Entry Permit sent to a place in Europe where I could pick it up. Since all data about ourselves are in the hands of the Immigration Authorities it may be possible that the same procedure is applied.

2. On your next visit to Philadelphia kindly contact Miss Hersey, the assistant of the Commissioner, who is very influential and kind-hearted and who knows us very well. She may show you the right way to follow and may be able to help you too.

3. re Mr. Lord: We are not sure if he has anything to do with our re-entry. He may be very important later on for our citizenship but we believe the Immigration-Deptmt. will act alone on the Re-Entry question. Please find out about it. The 2 departments are entirely different and the re-entry question is in the hands of the Immigration Officials in Philadelphia.

4. The main points to point out to the authorities are:

a) I was arrested and interned innocently for 3 years.

b) that I have never done anything inimical to the interest of the United States.

c) that I have applied for citizenship at a time when everybody believed Germany was winning the war.

d) that I have been punished good and hard by having been interned for so long and by loosing my established business innocently.

e) that I have never been a Nazi nor ever had any connections whatsoever with any Nazi Officials nor any officials of the Nazi German Government.

f) that I have never assisted the Nazi Party or the German Government with any monetary contributions in the form of taxes or otherwise.

g) that all the money which I own is profit from my own business enterprises, which were not located in Germany.

h) that I never intended to live in Germany again is shown by the fact that I never bought any Rueckwanderermark or property in Germany.

i) that I was persecuted and arrested by the Gestapo shortly after my arrival which might have had the severest consequences clearly shows what I thought about the Nazi Outfit.

Kindly see Mr. Kelly if possible once a month and I am sure you soon will have a success you will be proud of.

You always wanted to do something for your Uncle Erhard, Rosemarie, now here is your chance, try your best and we will never forget it.

Best regards and best wishes to all of you.

always Your

*Plaintiff's Exhibit 31*

MRS. E. M. OEHMICHEN
LEBERBERG 12/14
WIESBADEN/GR.HESSEN

July 5, 1946.

Dear Martin, dear Kaethe and Anita,

• • • •

What you write about Philadelphia is very discouraging. After all, the highest and most reliable officer we could get in touch with before our departure was the Officer in Charge, Mr. O'Rourke. He assured Erhard that a repatriation would not bar our return to the United States, especially since we left practically all of our belongings there. The reason why we left is well known to the authorities there, they all knew what kind of antagonism we faced and they also know what type of people we were interned with. A Mr. Harrsison from the State Department who came to visit the camp with the Swiss Representative, Dr. Fehr, in January 1944 said to me verbally: "I understand that you wish to be repatriated to Germany when I look at the type of people who are interned with you." What was clear to him, on a two day visit was obvious to people who had close contact with the camp all year round. Anyhow, I was told in Hamburg that you have to fill out Form 1-133 which I wrote you about in my last letter and I hope you have done so already. This is the first concrete thing that has to be done and it has to be done from over there.

I just read again what you wrote about the storage payment. Of course, at the time I thought we might be out in 6 months and that was the reason why I did not want to have it paid again for a year. At that time I did not think that we would be so swayed in our logical judgment when someone would just hold the gates open and would let us have freedom, if only in Germany. How-

ever, when the payment becomes due again this October it will probably not be wise to pay for another year because I definitely hope to be over there next spring. I think we should take out the insurance for $7,500.—, that will be an additional expense for abt. $45.—but it puts us a little more on the safe side. Of course my Meissen, Silver and linens alone are worth more than that, but then I do not think that if there is damage or theft, that the whole lot will be lost.

Do write us more about Anita or for heavens sake why does she not write herself once in a while. Does she think we have become such morons that it isn't worth while? I am interested in everything she does, her parties, her problems, her dresses etc. It would be wonderful if she could come over for the "World's Student Conference in Prague. She naturally would have to come to Wiesbaden for a time and see us here. We are, in the meantime, quite well established here. Because of Erhard's appointment by the Military Government and the Gross Hess. Staatsministerium and because of the fact that he was a political prisoner of the Gestapo we have accor odations which very few people have here today. As I wrote you already, we live in the Villa belonging to Vera von Langen's mother.. It has no direct bomb-damage but was, what is called "blown through" since three block busters came down in the immediate neighbourhood. All windows were broken, and the window frames and doors torn apart and out of shape. Oddly, the marble wall between the bathroom and the Boudoir came down, whereas not a single china cup was broken in a Glas-Cabinett that was standing in the same Boudoir. There is a lot of damage in the panelling of the Library and the Bed-Room, but it is being repaired gradually and at least the part where we live has glas-windows and doors etc. already. The Library is panelled with Carvings from an old Italian Monastery and with a few pieces of old Delft Pottery which I have been able to pick up

in an old antik shop, looks very nice. A very old big Oil-Painting is hanging over the fire-place. The Roceocco Salon has all golden furniture, a beautiful Boule Commode, 2 built-in China Cabinetts with two lovely vases on top and beautiful Meissen Figurines within. The ceiling is beautifully done with scenes painted in oil showing: Spring, Summer Fall and Winter, the walls are covered with lovely silk and beautiful mirrors. I bought a lovely Meissen Fruit Basket with the typical Meissen flowers all around the outside which will go beautifully with my candelabra and which I have standing on the Commode which looks very nice. The Bedroom—upstairs is done in Louis XV style, all walls are panelled, the dressers, wash-stand etc. all built in to swing out when we want to use them. The bed is trimmed with old rose taffeta, the bed-spread is of the same color, as well as the drapes over the bed, on the window and the upholstery on the chairs. From the bedroom we have on the one side the Boudoir which is damaged quite extensively and which has not been repaired yet, on the other side we have the doors leading to a large terrace with yellow garden chairs and flowered chintz cushions. No money has been spared to built all this and it is really very lovely. We were lucky to get it and to know Vera von Langen, whose mother in turn is very happy to have us because she knows that everything is being taken care of as if it were ours. The bathroom is done all in yellow and black marble, the great big hall is done in grey marble with beautiful oil-paintings again, an old Roman chest and a beautiful bar behind a golden wrought-iron gate with the Glas-Cabinets and fixtures all done in Chinese gold laquer. To all this belongs a beautiful garden where we can sit, if only the weather would stay nice a little longer. We have a beautiful day once in a while but it usually does not take long to get cloudy and rainy and cold again. Sometimes I am really longing for a good old American summer day. To

spend a day on the Jersey beach and to eat toasted buns with grilled Franks or a real Shore Dinner would really be wonderful. I am often glad that we did and enjoyed so many things when they could be done. That is one of the reasons why I do not regret to be here at this time, which really is most interesting and cannot even faintly be grasped by someone who has not gone through all this.

Erhard is very busy with his job. He is meeting all kinds of very interesting people. All important men in the Greater Hesse industries are contacting him and we have to invite them to our house. Then later on, when the foreign missions arrive we will have to do the same with them to give the exhibition a personal touch by orders of the Military Government here. All in all it is just the thing for Erhard, as he could never get used to deal solely with the Germans. The heel-clicking and the hand-kissing that is still going on is almost nauseating to me. When one has lived the larger part of one's life abroad one can never get used to all this ballyhoo again.

Now to Martin. It was really nice to get such a long letter from you and to hear about all the news in Chicago and Muscatine. How wonderful for you to receive an award and a price for your hobby. Dear Martin, I know how gratifying this is, especially when the family is complaining about all the time this work took you and how wonderful the feeling must be for you when you can then rub this award under their little noses. We are quite proud to have such a famous brother in law. Please do not worry about the mail any more. I think we have received all the letters you wrote and we are thankful for everything you and Kaethe and Rosemarie did for us. We know you are at all times doing your best, if the success has not been forthcoming the way we wanted it we know it is not your fault but more so our own. However, we will not blame ourselves anymore. Anyone

who has not been deprived of his freedom for 3 years innocently will not understand Erhard's state of mind. Any soldier who becomes a prisoner of war at least knows that up to the moment when he becomes a prisoner he has learned to use and used weapons to kill as many soldiers of the enemy nation as possible. When he becomes a P.W. and looses his freedom he knows at least that this is the price which he has to pay for any actions of war that he engaged in against the enemy nation. We, however, as civilians, never were enemies. We choose to live in America, when we had ample means to live in Germany, because here we had found a country conforming more to our ideals than anything Germany could offer us. We had never actively or secretly engaged in anything against the interests of the United States, neither were we actively or secretly members of any political party that had anything to do with facism or national socialism, in fact we were not members of any political party. And to loose our freedom for such a long time was awfully hard. A very beautiful American song has as its closing line at the end of each stanza "don't fence me in", and I think that, what goes for any American in this utterly human plead, should apply to us too. We just could not bear the fence anymore.

Your sympathy is indeed very gratifying and I do want to tell you how much we appreciate it. However, I have become very hard-boiled in this aspect. The German people as a whole take everything for granted and in most cases they do not even say thank you if you go out of your way doing things for them. If you would travel on trains as I have done and would hear the talking that goes on about the food situation and how they complain about the Americans and the British and nobody ever giving a kind word about the wonderful dried milk or dried eggs or dried vegetables we have been getting lately you would despair. And how they are

going to write to their uncle, to send them packages and I am sure they do not even remotely think how they can ever reciprocate. So do not be swayed by your pity too much, in most cases they have an uncle in the country or a garden or an Ami-friend; pityful only is the state of the old who cannot go around and help themselves,—people with children are not so bad off either because they get extra rations. If they are not very good friends of yours with whom you have been in contact all the time before the war started, I would be careful. Just for the sake of making a good impression on anyone whom you or Martin knows casually I would not send anything because people here do not have the decency even to think that you have to pay good Dollars for everything. When I tell you that of the many packages I sent to Germany from the United States during 1940/41, some of them incl. 10 pounds of green coffee etc. not one recipient has even refered to these packages or thanked me for them although we see them here quite often, then you will understand what I mean.

I would be very happy if Anita came over for the Student Convention. It would not do her any harm to see the terrible devastation the war has caused. She could stay with us and I am sure we would have a wonderful time. We could make trips along the Rhine, since we also have a car again. For

*Plaintiff's Exhibit 32*

FEDERAL BUREAU OF INVESTIGATION
United States Department of Justice
1836 Raymond-Commerce Building
Newark, New Jersey

April 30, 1942

MEMORANDUM

Re: Erhard Max Oehmichen
Mrs. Erhard Max Oehmichen

This is to acknowledge that all the property belonging to me and my husband Erhard Max Oehmichen, which was taken from our premises at 67 South Munn Avenue, East Orange, N. J., and our office material located at the Industrial Office Building, 1060 Broad Street, Newark, N. J., by agents of the Federal Bureau of Investigation, United States Department of Justice, has been returned to me at this time except for the articles listed on the attached two sheets.

This does not include the $13,000.00 in cash nor the 13,000 reichmarks which are presently being held at the Federal Trust Company, Newark, N. J., awaiting the outcome of this matter now before the Attorney General.

/s/ A. H. J. Oehmichen
Mrs. Erhard M. Oehmichen

Witnessed:
/s/ Murray H. Nance, Jr. 4/30/42
/s/ Clement L. McGowan, Jr. 4/30/42.

*Defendant's Exhibit 1*

Erhard M. Oehmichen
P.O. Box 788
Crystal City, Texas

Crystal City,
May 29, 1943

Dear Dr. Fehr,

As I am told, negotiations are again made about the possibilities of exchange between the United States and Germany.

After you had put us down for the third exchange on the "Drottingholm" and on the basis of that report we had made all preparations for such a departure, we were very disappointed as unexpectedly the exchange was broken off last July. It is well known to you how much my wife suffered in her health because of this disappointment. I am not one bit of the opinion that a longer stay for years in this climate would be very good for her. I would be happy therefore if a way could be found to include us in a new exchange for humane reasons. I wish you would try every means to this effect, and establish communication by telephone with Mr. Tannenberg in order to effect exchange with the next opportunity.

As I am told there are several people from Montreat (interned here) on the new list. As these people for the most part are not diplomats but business men, we, being German business men in North America, and furthermore, the Casino of Nations financed by me and because of representation of German products in the New York World Fair was held universally as the official German Exposition Place, should definitely have the same chance as the Central Americans.

I hope to hear from you soon and thank you for your special efforts you may make in this matter for me.

Your most truly

Erhard M. Oehmichen

Dr. W. Fehr
Swiss Legation
Washington, D. C.

Translation made by

/s/ Martha M. Bertschler
Martha M. Bertschler
Spanish German Translator Interpreter

*Defendant's Exhibit 2*

U. S. DEPARTMENT OF JUSTICE
Immigration and Naturalization Service
Alien Internment Camp
Crystal City, Texas

January 30, 1943

FROM: Officer in Charge, Crystal City Internment Camp.

TO: Internees, Crystal City Internment Camp.

SUBJECT: Wishes of internees regarding following matters.

1. (a) Very shortly space will be available for a limited number of internees and their families at the Seagoville Detention Station. Do you wish to be considered for transfer? Answer: *No*

(b) If the above question is answered in the affirmative, state reasons and ages and sex of family members (now at Crystal City) who will accompany you in order

that it may be determined who shall go first. Answer: *not applicable*

2. (a) Some consideration is being given to utilizing the original facilities at this internment camp for Germans already in custody and their families. If decision is reached to do so, would you like to be considered an applicant to remain: Answer: *yes*

(b) If the above question is answered in the affirmative, state:

(1) Number, ages and sex of family members (now at Crystal City) who will remain with you. Answer: *Mrs. E. M. Oehmichen, age 38, female*

(2) State whether you or the members of your family entertain any objection to sharing (a) this internment camp (b) its entertainment (c) recreation, and (d) educational facilities with persons of other than the German race. Answer: *If this question applies to Japanese Nationals we have no objection.*

(3) While it will not be possible at all times to permit internees to engage in the occupations of their choice, it is the policy to permit them to do so if possible. If you wish to remain at this internment camp, what kind of work would you like to perform? Answer: *School, Education and Recreation*

Also state lines of work in which you have had training: *Studied Law and Economics on German Universities. Experience in Business Administration in Japan, China, Germany and the United States.*

/s/ Erhard M. Oehmichen
(signature)
Erhard M. Oehmichen

*Defendant's Exhibit 4*

ERHARD M. OEHMICHEN
CRYSTAL CITY, TEXAS. 2-10-1944
Willard D. Kelly
Crystal City Internment Camp,
Crystal City, Texas.

My dear Mr. Kelly,

I was certainly most disappointed to hear from Mr. McAlexander that, although the Security Agencies have no objection to our sailing, we cannot go because the boat is filled up. I do not think that you fully realise how mean this decision or excuse must strike us. I believe we are the only people in this camp who have been trying to be repatriated since April 1942 and Mrs. Oehmichen and my close friend and lawyer, Major Patrick J. Walsh have spared no effort (they even went to Washington many times) to get permission to be repatriated.

When the exchange suddenly stopped in July 1942 Mrs. Oehmichen had a nervous breakdown followed by a severe peritonitis which brought her close to death. Now after having stayed in this camp for 15 months we had almost given up hope to be repatriated during the war.

When during our recent conversation with you and Dr. Fehr the possibility was mentioned that a few people from North America might be added to the exchange we were sure that we would have the priority because we had waited the longest. We now see that you have changed your plans and let almost the whole camp go; many people who have only been interned for a short time and others who never expected to be repatriated. And we, who were supposed to be the only ones to sail are about the only ones to stay because the boat is filled up. I am sure that Dr. Fehr who already put us on the list of a previous exchange in July 1942 does not agree with this.

Does not this excuse strike you as ridiculous? Certainly you had set aside a number of cabins for the cases you recommended personally and on which you were still expecting an answer yesterday. Dear Mr. Kelly, I cannot be satisfied with the decision you handed me today and I wish, if you have other reasons, to say so, otherwise please reconsider our case. If you cannot do this from your side will you please have the enclosed telegram dispatched immediately.

Very sincerely Yours

/s/ Erhard M. Oehmichen
Erhard M. Oehmichen

*Defendant's Exhibit 6*

LEGATION OF SWITZERLAND
Washington 5, D. C.

Please refer to file
No. VIII-F-19

Department of
German Interests
1439 Mass. Ave., N.W.
Telephone
EXecutive 2250-51-52

MEMORANDUM

The Legation of Switzerland in charge of German interests has received the list of civilians which the Department of State has requested in connection with the proposed exchange of German and American nationals to take place in the near future.

In addition to the list, a cable was received reading in its translation as follows:

"With note of November 10 the American Government submitted to the German Government through the intermediary of the Federal Political Department

in Bern the following proposal: 'It is contemplated to conclude before Christmas a German-American civilian exchange to include 850 persons on either side.' The American Legation declared that the American Government is prepared to accept a preferential list for this exchange and to give it its consideration as far as possible. The German Government declared that it agrees in principle to such an exchange before Christmas. It further declared that it would also give consideration to the American preferential list, as far as possible.

"By separate cable you [the Legation] will receive German preferential list with the request to submit it immediately to the American authorities. The Protecting Power for the United States in Berlin submitted to the German Government analogously the American lists which were drawn up under the guidance of the American Legation in Bern.

"In addition to this exchange and at the same time, there should be repatriated 72 merchant seamen on either side. The German Government, however, has not expressed a view on this proposal up to this time."

In the meantime, the Legation has received an additional cable requesting that the following note from the German Legation in Bern dated November 26 be submitted to the Department of State:

"*PRIMO:* German Government desires that, besides the persons listed in the note of November 22 which should find preferential treatment upon the contemplated exchange, the German nationals who were brought to the United States from South America and German internees who had their former residence in North America should find consideration.

"*SECUNDO;* According to a communication from the Department of State providing that, after the

completion of the examination in the middle of September of German sanitary personnel in the United States, all such personnel found supplementary as a consequence thereof should be repatriated independently from a further exchange, the German Government furthermore anticipates that this sanitary personnel be included in the German civilian group from America."

The Legation submits in the enclosure a list of names proposed by the German Government, as per the first communication quoted above, after having rectified it particularly as to present whereabouts, spelling of names, and after having provided an additional column giving the names of relatives of those proposed who had applied for repatriation but who were not included in the cable received.

It is worth mentioning also that the authorities abroad, when requesting repatriation of Federal or State prisoners of German nationality, were only aware that two out of the three cases were of this category and were listed by them in such a manner.

Whereabouts of certain other persons could not be ascertained by the Legation and these were therefore enumerated separately.

WASHINGTON, D. C.
NOVEMBER 28, 1944
WCB:rl

1 enclosure

| *Names Proposed by German Government* | *Relatives Not Proposed, But Who Have Applied for Repatriation* |
|---|---|
| • • • • • | |
| OEHMICHEN, ERHARD | Anni (wife) |
| • • • • • | |

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1956

No. ~~427~~ 227

ANNI H. J. E. OEHMICHEN, *Petitioner*

v.

HERBERT BROWNELL, JR., ATTORNEY GENERAL, AND AS SUCCESSOR TO THE ALIEN PROPERTY CUSTODIAN

## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1956

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No.

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ANNI H. J. E. OEHMICHEN, *Petitioner*

v.

HERBERT BROWNELL, JR., ATTORNEY GENERAL, AND AS SUCCESSOR TO THE ALIEN PROPERTY CUSTODIAN

---

## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

---

The petitioner, Anni H. J. E. Oehmichen, appellee below, prays that a writ of *certiorari* issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit in the above-entitled case.

### OPINIONS BELOW

The findings of fact, conclusions of law and judgment of the District Court are unreported, but are

set forth at pages 21-28 of the transcript of the record herein (J.A. 21-28). The opinion of the Court of Appeals for the District of Columbia Circuit is as yet unreported but is set forth, together with its judgment, at pages 184-190 of the transcript of the record herein and in Appendix A hereto (pp. 1-8, *infra*).

## JURISDICTION

The judgment of the Court of Appeals for the District of Columbia Circuit, reversing the District Court, was dated and entered February 28, 1957. The plaintiff-appellee's timely petition for rehearing or rehearing en banc, filed on March 15, 1957, was denied by orders dated and entered March 29, 1957. The jurisdiction of this Court is invoked under Tit. 28, U.S.C., Secs. 1254(1) and 2101( ).

## QUESTIONS PRESENTED

(1) Whether the petitioner and her husband, both long-time residents in the United States, were ever "enemies" under the Trading with the Enemy Act—i.e., whether they became "resident within" Germany, within the meaning of that term as used in the Trading with the Enemy Act, when shortly before the end of hostilities they went to Germany as repatriates, for the sole purpose of escaping from indefinite continued confinement in internment camps in this country, and with the fixed intention to return to the United States as soon as possible after the end of hostilities.

(2) Whether the Attorney General may retain property seized from the petitioner under the Trading with the Enemy Act at a time when she had left Germany, had returned to the United States as a permanent resident, and was not on any other basis

an "enemy" within the meaning of that term as used in the Trading with the Enemy Act.

## STATUTES INVOLVED

The statutory provisions involved are Sections 2(a) and 9(a) of the Trading with the Enemy Act, as amended, 40 Stat. 411, et seq., as amended, Tit. 50 U.S.C. App. §§ 2(a) and 9(a), set forth in Appendix B hereto (pp. 9a-10a, *infra*).

## STATEMENT

The petitioner and her husband owned some $15,000 worth of property in the United States, different portions of which were vested by the Attorney General, pursuant to the provisions of the Trading with the Enemy Act, in 1947, 1950 and 1951 (J.A. pp. 7, 9, 12). Petitioner brought this action for the return of such property in the United States District Court for the District of Columbia in 1954, pursuant to the provisions of Section 9(a) of that Act, by the terms of which any person "not an enemy" may bring such an action and recover his property. "Enemy" is defined in Section 2(a) of the Act as including, *inter alia*, persons who are "resident within" enemy territory (App. B, pp. 9a-10a, *infra*).

At the time of the first vesting, petitioner and her husband were physically present in Germany, under circumstances to be detailed below. One of the major issues of this case is whether, under those circumstances, petitioner and her husband were "resident within" Germany and therefore "enemies", disentitled as such to sue for and recover the property then vested. This is the so-called "residence" issue. At the time

of the second and third vestings, petitioner's husband had died and petitioner, his sole legatee, had returned to the United States as a permanent resident and picked up the threads of her former existence here. The other major issue in this case is whether, regardless of the "residence" issue, the petitioner is not in any event a non-enemy as to the property vested after her return to the United States and therefore entitled to recover it. This is the so-called "late vesting" issue. In the instant case the majority of the Court of Appeals became so engrossed in the residence issue that they either overlooked or ignored the late vesting issue. Chief Judge Edgerton did not reach it in his dissent (App. A, pp. 1a-8a, *infra*).

The "late vesting" issue presents a question of law which requires little factual exposition beyond the foregoing. The residence issue, however, turns on questions of intent, and therefore requires a fairly complete summarization of the evidence underlying the unchallenged findings of fact made by the trial court (J.A. 21-25).

At the outbreak of World War II petitioner and her husband were modest persons of modest means who had long been residents of the United States. Though they were born in Germany he had not lived there since 1923 and she since 1928, at which time they were young people in their 20's. After 1928 they lived for a number of years in the Far East, during which time they became engaged to be married. They were married in London in 1934, and from then on lived in the United States as permanent residents. Petitioner's husband established himself in the importing business, in which petitioner herself also took an active part. At first they had their business in

Chicago, but after 1935 it was in New York. In 1939 petitioner's husband had the misfortune to invest in and operate the Casino of Nations, an unprofitable restaurant at the Worlds Fair which featured German beers and wines for which he had the American agency. In 1941 he took out his first papers for United States citizenship. Petitioner did not do so, in order to preserve certain inheritance rights in Germany.

One night early in March, 1942, FBI agents swooped down upon petitioner and her husband, arrested them as dangerous enemy aliens, and carted them off to jail late that night. Petitioner was released the next day, but her husband was not; he remained imprisoned for the next two and one-half years, first at Ellis Island, and later at Crystal City, Texas, where his wife joined him.

Petitioner and her husband were never informed as to the reasons for arresting them as "dangerous enemy aliens", and, as the record shows, do not know to this day.[1] Newspaper accounts appearing just after their arrest set forth numerous "facts" purportedly underlying the arrests, which at the trial below were shown to be untrue and entirely without any semblance of foundation—e.g., that they owned two airplanes, that they were acquainted and friendly with von Ribbentrop, the German Foreign Minister, and that they imported products from a German company owned by

---

[1] Ever since their arrest, efforts have been made to ascertain the reason for the Attorney General's designating them "dangerous enemy aliens", and arresting them as such, but all efforts have been unsuccessful. Prior to the trial the Attorney General was served with a notice to produce the pertinent records of his department which he refused to do. A motion to require production twice made at the trial was denied by the District Judge (J.A. 29-30).

a family into which von Ribbentrop had married. In any event, petitioner's husband felt that he had been unjustly treated and reacted very badly to his arrest and confinement. He was profoundly upset by the inaccuracies of the newspaper accounts, by the fact that he was not trusted to be at liberty—"that something was against him, which he didn't know" (J.A. 42)—and by the fact of being locked up. He became fearful; he lost a great deal of weight; he cried frequently (which he had never done before); he begged petitioner to get him out. In the words of petitioner, "He just did not stand the internment at all. He didn't bear up." (J.A. 42).

As a result of the foregoing, petitioner's husband signed a form in May, 1942, requesting repatriation to Germany for himself and petitioner, to which he added the significant words, "In the event of my internment". At that time petitioner's husband had had a somewhat random "hearing" on whether he should be released or should continue to be interned. Some time had elapsed, but the results of the "hearing" had not been announced, and he "was fascinated by the idea of leaving the camp" (J.A. 43). Prior to that time neither he nor petitioner had ever considered the idea of leaving the United States.

Thereafter it became clear that petitioner's husband would continue to be interned, and petitioner herself became exceedingly ill. She too lost a great deal of weight and suffered a variety of physical ailments and infections, as well as mental disturbances. Her husband feared her "utter collapse", and one of her doctors concluded that she was "suffering from a persecution neurosis which, if left neglected would result in a severe nervous breakdown with resultant

confinement to a mental institution". Consequently a number of additional requests for repatriation were made by and on behalf of petitioner and her husband during the summer of 1942. None was granted, however, and in December, 1942, petitioner's husband was transferred to the internment camp at Crystal City, Texas, where petitioner was permitted to join him.

The camp at Crystal City was surrounded by a "very high" barbed wire fence which was kept lighted at night and was watched over by armed guards from high towers. Petitioner and her husband had no doubt that they were in prison. They lived in a shelter, without sewer or water and had continual difficulties with the pro-Nazi majority in the camp. Their access to recreational facilities which the camp offered was restricted because of their difficulties with the pro-Nazis. Petitioner's husband was forced out of teaching in the camp school—the only work in the camp for which he was suited—because, among other things, he taught the children about Einstein. He was physically attacked, stoned, and threatened with hanging by the pro-Nazi element on various different occasions, and was fearful for his safety. Thus after a short time in the Crystal City camp, he again requested repatriation—limited, however, to repatriation "during the war, otherwise not" (J.A. 144).

As time went on he became further depressed, to the point of being sometimes irrational in his actions, and at one point in June, 1944, he signed a form stating that he would not accept parole if it was offered. Petitioner testified that it was her husband's view at the time that accepting parole would be tantamount to confessing guilt of some offense, and would result in his being treated by the parole officers as a common

criminal (J.A. 59). Thereafter, following a brief leave from the camp, which petitioner was allowed to take without her husband, she was able to persuade him that his judgment had been affected by "barbed wire sickness" and that he had misunderstood the consequences of parole. She then specifically requested a review of his case, and applied for his release on parole. The reply was that, "No change will be made in your husband's internment status at this time."

Then in the first days of 1945, at a time when the Allied invasion of Europe and the liberation of France had already taken place, and the eventual outcome of the war was no longer in doubt, petitioner and her husband finally had an opportunity, which they took, to escape from confinement by being repatriated to Germany. They left all their possessions, both personal and business, in storage in New York, refusing numerous offers to buy such property as their automobile, appliances and furnishings at premium prices, because they expected soon to return to the United States, when they would use such articles.

Petitioner and her husband were shipped to Bregenz, Austria, where they remained, having no place else to go. They did not seek employment or engage in business. Petitioner's husband made two trips into Germany to search for relatives, in the course of which he sold two pounds of coffee which they had brought with them for 5,000 marks, which enabled them to defray their living expenses for a long time without working. In April, 1945, petitioner's husband was arrested as a political prisoner by the Gestapo, because other Crystal City repatriates had reported that he was anti-Nazi. He was released a few days later, how-

ever, when the First French Army approached Bregenz and his German jailers fled.

Immediately after the hostilities in Europe ended, but while the war with Japan was still going on, petitioner and her husband commenced efforts to obtain re-entry permits for return to the United States. In due course, they learned that such permits could not be issued and that they would have to obtain visas to return. In the meantime, petitioner and her husband made their way to Wiesbaden, in the American Zone of Occupation, where petitioner's husband was engaged by the American Army of Occupation and the local Ministry of Economics to organize an export show, for which work he was highly commended by his American superiors. Neither he nor petitioner engaged in any employment or business other than this while in Europe, although petitioner's husband was offered opportunities to engage in business in Germany, all of which he declined.

Petitioner's husband died in Wiesbaden on May 19, 1948, as a result of a disease from which he was found to be suffering while imprisoned at Crystal City. Shortly thereafter, petitioner went to Switzerland and there obtained an immigration visa which, it had turned out, could not be issued by the American Consulates in Germany. In February, 1949, she re-entered the United States as a permanent resident, and since then she has re-established the import business which she and her husband conducted before the war, has taken her belongings out of storage, has become an American citizen, and has brought to the United States such members of her immediate family as remained in Germany after the war.

On the basis of the foregoing evidence, the trial court made detailed findings of fact, the evidentiary support for which was not questioned on appeal. Among these findings were the following:

"8. Prior to the time of their arrest, neither plaintiff nor her deceased husband had any intention to abandon their residence in the United States.

"10. As a result of the internment and its effect on him plaintiff's husband requested repatriation and plaintiff made requests for repatriation to various departments and persons in the United States Government. Such requests were for repatriation and were clearly limited to repatriation during the time that internment was expected to last, i.e., the duration of the war.

"11. Plaintiff and her husband at all times intended to return to the United States after the end of hostilities.

"12. All requests for repatriation were made for the sole purpose of freeing plaintiff's husband from internment and were made solely because of internment and its attendant conditions.

"14. Plaintiff's husband was once physically attacked and at another time an attack on him was prevented by others present. A stone was thrown at him on one occasion and at another time pro-Nazi groups shouted that he should be hanged.

"16. The requests for repatriation to Germany by plaintiff and her husband were made solely to escape internment and the emotional problems created thereby.

"17. Plaintiff's husband was the highly-nervous type; he was not pro-Nazi, and the attitude of this group of internees toward him and plaintiff rendered his life as an internee particularly uncomfortable. Especially was this the case when

he felt that his confinement was not justified if all the facts as to his sympathies were duly weighed.

"23. Plaintiff and her husband, as soon as hostilities in Europe had ended, made every effort they could to return to the United States and solicited the intervention of friends and relatives in the United States before the United States immigration authorities to aid their return.

"24. At no time while they were in Austria or Germany did plaintiff or her husband seek employment or engage in business except for plaintiff's husband's employment with the United States Army of Occupation.

"25. Plaintiff's husband was offered opportunities to engage in business in Germany which he did not accept.

"28. After plaintiff's furnishings were stored, both she and her husband, while in the United States and in Europe, refused offers to buy their automobile and certain household appliances at premium prices because they planned to use these possessions again upon their return to the United States.

"31. Neither plaintiff nor her husband ever abandoned their residence in the United States." (J.A. 21-25).

On the basis of these findings, the trial court concluded that petitioner and her husband never became "resident within" Germany, their requests for repatriation being "not the result of their free and intelligent choice". Hence they were not "enemies" under the provisions of the Trading with the Enemy Act, and petitioner was entitled to return of her own property and that inherited from her husband. The trial court also concluded that in any event, petitioner was not an

enemy at the time of the second and third vestings, in 1950 and 1951, because, having by then returned to the United States, she was not then resident within enemy territory.

The United States Court of Appeals for the District of Columbia Circuit reversed, Chief Judge Edgerton dissenting. The majority held, without controverting the trial court's findings of fact and in direct opposition to its conclusions of law, that petitioner and her husband became "resident within" Germany when they were repatriated because they were "willing residents" of Germany, and were "in Germany by their own *free* choice" (emphasis supplied). (App. A, pp. 4a-5a, *infra*). It did not consider petitioner's contention that in any event she was entitled to return of so much of the property as was seized after her return to the United States because at least by then she was no longer "enemy".

The dissent did not reach the "late vesting" issue, but was based on the proposition that "if aliens who have long been resident in the United States choose repatriation to an enemy country in preference to imprisonment in the United States during a war, and always intend to return to the United States as soon as the war is over," they do not thereby become " 'resident' in the enemy country during their sojourn there".

Petitioner filed a timely petition for rehearing, asking that the "late vesting" issue be considered and passed upon, which petition was denied, Chief Judge Edgerton again dissenting.

## REASONS FOR GRANTING THE WRIT

### A. THE RESIDENCE ISSUE

**(1) In holding, notwithstanding the facts as found by the trial court, that petitioner and her husband were "willing residents" of Germany, there "by their own free choice", the Court of Appeals decided an important federal question which has not been, but should be, settled by this Court.**

One of the reasons advanced by petitioner in the court below in support of her contention that she and her husband never became "resident within" Germany was that their "choice" of repatriation as the only alternative to indefinitely continued confinement was not a sufficiently free choice to make them residents, within the meaning of the Trading with the Enemy Act. The majority of the court below held, however, that their presence in Germany was voluntary, for purposes of that Act, and without looking further, reversed the trial court's judgment for petitioner.[2]

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[2] The court below summarily dismissed the decision of the United States District Court for the District of Hawaii in the case of *Akata* v. *Brownell*, 125 F. Supp. 6 (D. Haw. 1954), saying simply, "We do not have in this case anything resembling the facts depicted in * * * *Akata* v. *Brownell*" (among others). Any fair reading of the *Akata* case, however, must necessarily leave one with the clear conviction that it would be difficult to have a case more closely in point, or in which the facts more closely "resembled" the facts in the case at bar, except for differences favorable to the petitioner herein. Akata, a long-time resident of Hawaii, was, like petitioner's husband, arrested and interned in 1942, without being informed of the substance or nature of any charges preferred against him. He was kept in a series of detention camps, ending up, with his wife and all of his six children, in the very camp at Crystal City, Texas, where petitioner and her husband were interned. While so detained, he executed a series of requests for repatriation—not, as in the present case, limited to repatriation "in the event of internment", or "if possible, during the war, otherwise not", but conditioned instead on his whole family (from which he was separated until 1945) being

In so doing, it decided an important federal question which has not been, but should be, decided by this Court—namely, where is the line to be drawn between the "voluntary" and the "involuntary" in this field?

The law is clear and undisputed that involuntary presence in enemy territory is not such presence as amounts to "residence" for purposes of the Trading with the Enemy Act. *Guessefeldt* v. *McGrath*, 342 U.S. 308 (1952); *McGrath* v. *Zander*, 85 U.S. App. D.C. 334, 177 F. 2d 649 (1949); *Stadtmuller* v. *Miller*, 11 F. 2d 732, 45 ALR 895 (2d Cir. 1926); *Josephberg* v. *Markham*, 152 F. 2d 644 (2d Cir. 1945); *Akata* v. *Brownell*, *supra*. But while this Court held in the *Guessefeldt* case, *supra*, that involuntary presence precluded a finding of residence, it has not under-

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allowed to accompany him. The whole family was repatriated to Japan in December 1945, after it had been reunited and after the end of hostilities. Akata settled down to farming in Japan and bought some land. In 1947 his property in Honolulu was vested and in that year he made inquiries about returning to Hawaii, which he finally did as an immigrant in 1952. He testified that when he went to Japan in 1945 he did not intend to stay there permanently and that Honolulu was his home. On these facts the District Court held that his involuntary uprooting from his home "infected whatever actions he took thereafter", and that he did not become "resident within" Japan because

> "at no time did the plaintiff freely and voluntarily abandon his permanent residence in Honolulu with the intention of taking up a new and permanent residence of his own choice in Japan." 125 F. Supp. at 10.

The court below was not, of course, bound by the decision of the District Court in Hawaii, and there could be no complaint had it simply stated its unwillingness to follow such decision. But its offhand dismissal, as not in point, of a case which is so evidently directly in point creates an unfortunate impression of such preoccupation in the reviewing court with the one question which interested it that it quite failed to consider the bulk of petitioner's case.

taken to explore how much less than actual "physical constraint" will suffice to render action taken involuntary. This is a question which frequently comes up, not only in connection with the loss of property under the Trading with the Enemy Act, but in connection with the loss of citizenship under the nationality laws. *Akata* v. *Brownell, supra; Josephberg* v. *Markham, supra; Stadtmuller* v. *Miller, supra; Acheson* v. *Murakami,* 176 F. 2d 953 (7th Cir. 1949); *Podea* v. *Acheson,* 179 F. 2d 306 (2d Cir. 1950); *Dos Reis* v. *Nicolls,* 161 F. 2d 860 (1st Cir. 1947); *Parrachini* v. *McGrath,* 103 F. Supp. 184 (S.D. N.Y. 1952); *Shibata* v. *Acheson,* 86 F. Supp. 1 (S.D. Cal. 1949); *Ishikawa* v. *Acheson,* 85 F. Supp. 1 (D.C. Haw. 1949); *Schioler* v. *United States,* 75 F. Supp. 353 (N.D. Ill. 1948); *In re Gogal,* 75 F. Supp. 268 (W.D. Pa. 1947); *Stipa* v. *Dulles,* 233 F. 2d 551 (3rd Cir. 1956). Petitioner submits that whatever the tests of duress in other fields of law, loss of citizenship under the nationality laws is hardly less serious than loss of property under the Trading with the Enemy Act, and accordingly the same criteria should be employed in either case in determining whether action involving such consequences was voluntarily taken.

The holding of the majority below that petitioner and her husband, by choosing repatriation to free themselves from confinement, exercised a "free choice" and were "willingly" in Germany is in direct conflict with the law established by the Circuit and District Courts in the so-called nationality cases. In those cases the courts have universally held that otherwise expatriating action, taken in order to preserve or gain freedom, where the alternative is confinement, does not carry with it the normal consequence of for-

feiture of citizenship. *Podea* v. *Acheson, supra; Dos Reis* v. *Nicolls, supra; Parrachini* v. *McGrath, supra; Shibata* v. *Acheson, supra; Ishikawa* v. *Acheson, supra; Schioler* v. *United States, supra;* and *In re Gogal, supra.* All of those cases involved the performance of an act, in order to avoid actual or threatened imprisonment, which normally would cost the actor his American citizenship. But in each case the court held that under such circumstances the act was involuntarily performed and therefore did not serve to bring about expatriation.[3] In the instant case the situation is the same: an act is compelled by the desire to escape from imprisonment, which act is the first step in placing petitioner within the language of a statute which would confiscate her property. In either case the considerations should be the same, i.e., whether the compulsion is sufficient to make the act involuntary.

If the principle of the nationality cases is correct and action taken to avoid imprisonment is not to be permitted to effect a forfeiture of citizenship, this Court should determine whether that principle is not equally applicable in the field of alien property, so that action taken to free oneself from imprisonment will not lead to a forfeiture of property either. And whether that principle is correct or not, the conflict between the nationality cases and the decision below is such that this Court should undertake to offer some guidance in determining whether action taken to regain or keep personal liberty is to be permitted to effect, or lead to, a forfeiture of property.

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[3] In *Stipa* v. *Dulles, supra,* the Third Circuit went beyond this to hold that economic necessity which induced acceptance of employment with a foreign government was sufficient to make the employment involuntary and therefore not expatriating conduct.

**(2) In holding inapplicable the decision of this Court in Guessefeldt v. McGrath, 342 U.S. 308 (1952), and looking only to whether or not the repatriation of petitioner and her husband was "voluntary", the Court of Appeals decided a federal question in a way which is in conflict with applicable decisions of this Court.**

The meaning of the words "resident within" in the definition of "enemy" in Sec. 2(a) of the Trading with the Enemy Act is central to our laws dealing with the control of enemy property and is brought in issue by substantially every judicial claim for the return of vested property. This Court has attempted, in its one opinion dealing with the issue, to give some comprehensive guidance as to the meaning of these words. *Guessefeldt* v. *McGrath*, 342 U.S. 308 (1952). The essence of its holding was that residence within enemy territory, for purposes of the Trading with the Enemy Act, requires not only physical presence, but an element of intent to be and to remain there which approaches actual domiciliary intent. 342 U.S. at 311-312.

The majority of the Court of Appeals in the present case did not purport to apply this test, but termed the *Guessefeldt* case inapplicable, and looked simply to whether or not the "choice" made by petitioner and her husband to be repatriated was voluntary. It was evidently confused by petitioner's contention that involuntary presence *precluded* a finding of residence and reasoned therefrom that the converse must be true—i.e., that if petitioner and her husband went to Germany voluntarily (as the Court went on to hold they did) then that voluntary presence, without more, would *require* a finding of residence. But this is by no means true, for the *Guessefeldt* opinion and the cases cited therein make it plain that one may enter (or remain in) enemy territory far more voluntarily

than did petitioner and her husband without becoming resident therein. See especially *Stadtmuller* v. *Miller*, 11 F. 2d 732, 45 ALR 895 (2d Cir. 1926), in which a German citizen domiciled in the United States, who was in Europe for his health during World War I, entered Germany after the United States was at war simply because he desired to take a "short rest" and settle the estate of his parents. Though his entry into Germany could hardly have been more voluntary, the Second Circuit held, after a comprehensive and careful review of the relevant cases and literature, that he did not become "resident within" Germany, since he had not intended to remain in Germany, but "found himself prohibited from leaving" by government regulations—a circumstance which can hardly have come as any surprise to him.

The *Guessefeldt* case involved a German citizen domiciled in the United States who alleged that he took his family to Germany for a vacation in April, 1938, was caught there by the outbreak of war in September, 1939, and was unable to secure passage home before March, 1940, when his re-entry permit expired. Thereafter, when this country entered the war, he was "involuntarily detained in Germany, first by the Germans and after 1945 by the Russians, until July, 1949". On these allegations this Court found it "clear" that Guessefeldt was not "resident within" Germany during the war, noting that his "stay before the war, as a matter of choice, was short" and that "the circumstances negative any desire for a permanent or long-term connection with Germany". 342 U.S. at 312.

In its discussion of "resident within" this Court simply observed that the term was intended to reach

beyond domiciliaries but not so far as sojourners in enemy territory, and defined it as implying "something more than mere physical presence and something less than domicile". 342 U.S. at 312. However the five lower court cases cited by this Court serve to put some flesh on the bones of this definition, for while they were cited "without specifically approving any of them", they were nevertheless relied upon by this Court for the "relevant extrinsic light" which they cast on the meaning of "resident within". They involved (1) an individual theretofore resident in the United States and later declared incompetent who, on doctor's advice, had returned to live in his home town in Italy from 1931 through World War II (*Josephberg* v. *Markham*, 152 F. 2d 644 (2d Cir. 1945)), (2) a German surgeon theretofore resident in the United States who in September, 1915, wishing to advance his career, aid the wounded, and visit his daughter, entered the service of the German Army for the duration of World War I as a Red Cross surgeon (*Vowinckel* v. *First Fed'l Trust Co.*, 10 F. 2d 19 (9th Cir. 1926)), (3) the individual discussed above who entered Germany after this country had gotten into World War I to take a rest and settle his parents' estate (*Stadtmuller* v. *Miller*, *supra*), (4) a native German and citizen of the United States, theretofore resident in the United States, who moved his wife to Germany in 1939 and who served as an agent of the secret intelligence service of the German Army during World War II (*Sarthou* v. *Clark*, 78 F. Supp. 139 (S.D. Cal. 1948)), and (5) a native American woman, in Germany for a visit, whose scheduled return home on September 9, 1939, was prevented by the outbreak of World War II, and who remained to marry a German citizen and live in Germany through-

out the war (*McGrath* v. *Zander*, 85 U.S. App. D.C. 334, 177 F. 2d 649 (1949)). In each of these five cases the Court held that, under all the circumstances, the claimant was not resident within enemy territory. And in each of them it is clear that the Court applied substantially the same conception of the meaning of "resident within" to the facts before it. This conception was distilled out of the first three cases in the fourth case mentioned as follows:

> "We think 'resident within the territory' as employed in the Act connotes something different from and more than living within specified areas. It is rather indicative of a settled and permanent place of abode, volitionally acquired and voluntarily assumed. It is a habitation having domiciliary properties [Citing the *Josephberg*, *Vowinckel* and *Stadtmuller* cases]." *Sarthou* v. *Clark, supra*, 78 F. Supp. at 142.

This distillation was quoted with approval in *McGrath* v. *Zander, supra*, the fifth case cited by this Court in *Guessefeldt*, and it has been adopted in subsequent cases as the controlling statement of the principle, *Kaku Nagano* v. *McGrath*, 187 F. 2d 759 (7th Cir. 1951) aff'd 342 U.S. 916 (1952); *Akata* v. *Brownell*, 125 F. Supp. 6 (D.C. Haw. 1954).

In the "extrinsic light" of the conception of residence underlying these decisions, it seems clear that petitioner and her husband did not, by their repatriation, become resident within Germany. They had no notion of leaving the United States until petitioner's husband was interned. They did not want to be repatriated except to escape from such internment. They wanted to come back to the United States as soon as they could without again being interned. Passing

the question whether their repatriation resulted in their having a place of abode in Germany which was "volitionally acquired and voluntarily assumed"; it is perfectly plain that in any event it was in no sense a settled and permanent place of abode, or a habitation having domiciliary properties. No doubt they understood better than Stadtmuller (*Stadtmuller* v. *Miller, supra*) that once in Germany they would be unable to leave until the end of the war—but at the time of their actual repatriation, January, 1945, the end of the war was in sight, and at the time of the first request for repatriation no one doubted that it would end in due course. In short, there were two stringent limitations on their presence in Germany which make it impossible reasonably to say that there was anything settled, permanent or domiciliary about it: (1) they did not want to be in Germany at all, except that it was necessary in order to free themselves from the internment camp; (2) they did not want to remain in Germany any longer than they had to, which, at the time of their actual repatriation, could not be long. In the words of this Court in *Guessefeldt*, "The circumstances negative any desire for a permanent or long-term connection with Germany". 342 U.S. at 312.

Thus when the facts in the instant case are matched against the opinion of this Court in the *Guessefeldt* case, it seems clear that the Court of Appeals' decision is grossly out of harmony with the concept of residence adopted by this Court. The extent of this conflict is underlined by a consideration of *McGrath* v. *Kaku Nagano*, 342 U.S. 916 (1952), which was decided by this Court on the same day as the *Guessefeldt* case and is the only other case in which the "resident within" issue has been before it. There this Court

affirmed, by an equally divided vote and hence without opinion, a Court of Appeals finding of non-residence. Notwithstanding the division of this Court, the facts in the *Nagano* case are eloquent as to how closely one may approach actual domicile in enemy territory and still leave it at least doubtful whether he is resident therein for purposes of the Trading with the Enemy Act. The circumstances were these: The claimant, a Japanese native, married a resident of the United States and established her residence in Chicago in 1915. She was physically present in the United States, except for trips to Japan, from then until 1924. *From 1924 on, the claimant was never again in the United States, but lived in Japan continuously, until five years after the end of the fighting in World War II.* During all this time she remained in Japan because she desired to be there while her children were educated and because, after the daughters reached marriageable ages in 1932 and 1937, she needed to be there if their marriages were to be arranged. Arranging the marriage of one of the daughters required until 1941, but the other never married and in 1950 the claimant gave up and returned to the United States to resume her residence here. Presumably the claimant would have been unable to return to the United States during the war years had she wanted to, but there is no trace of a suggestion that she wanted or attempted to. Nevertheless she alleged and the Seventh Circuit held that she had never intended to, and had not, relinquished her residence in the United States or become "resident within" Japan, 187 F. 2d at 762-764.

The Trading with the Enemy Act is confiscatory legislation, justified only by the necessities of war,

and the provisions with which we are here concerned are in mitigation of such confiscation, which may go far to explain why the courts have consistently been reluctant to attribute enemy status to persons, like petitioner, whose property and whose loyalty were not in fact at the disposal of the enemy during the war. In any event, the decision of the Court of Appeals in the present case is wholly out of keeping with the trend of decision in this Court and in the lower courts, and suggests the need for a further expression by this Court as to the meaning of "resident within" in the Trading with the Enemy Act, for the guidance both of the lower courts and the Office of Alien Property in connection with the many judicial and administrative claims[4] for return which remain still to be settled.

### B. THE LATE VESTING ISSUE

**(3) In ruling against petitioner on the late vesting issue, without discussion, the Court of Appeals decided an important question of federal law which has not been, but should be, settled by this Court.**

The second and third seizures of petitioner's property by respondent were made *after* petitioner had returned to the United States as a quota immigrant, *after* she had been lawfully admitted to the United States for permanent residence and *while* she was in fact resident within the United States, as she has been continuously at all times since her return. Although it be true that at the time of such seizures petitioner

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[4] The periods of limitations fixed by Section 33 of the Trading with the Enemy Act (Tit. 50, U.S.C. App. § 33) for the filing of judicial and administrative claims for the return of vested property are such that there are now pending many administrative claims which cannot be heard judicially, so that the final decision thereon must be that of the Office of Alien Property, reached on the basis of relevant court decisions.

was a German citizen, residence, not citizenship, is the sole determinative factor under that portion of Section 2(a) of the Trading with the Enemy Act which alone is here relevant. That definition of "enemy" is simply "[a]ny individual * * * of any nationality, resident within the territory * * * of any nation with which the United States is at war * * *". This definition was derived bodily from the prize law concept long obtaining in Anglo-American jurisprudence that for the purposes of prize, the enemy or non-enemy character of the owner of captured property depends not on his citizenship, but on whether or not he resided at the time of the capture within enemy territory. See, e.g., *The Friendschaft,* 3 Wheat. (U.S.) 12 (1818); *The Venus,* 8 Cran. (U.S.) 253 (1814). And, while in the forty years since the enactment of the Trading with the Enemy Act, there has been no judicial determination whether under it the property of an individual may be seized and confiscated *after* he has ceased to reside in enemy territory, the numerous prize cases in which the question was raised unanimously answered it in the negative. *United States* v. *Guillem,* 11 How. (U.S.) 47 (1850); *The Friendschaft, supra; The Venus, supra; The Francis,* 1 Gall. 614, Fed. Cas. No. 5,034 (1813), aff'd 8 Cran. (U.S.) 363; *Duguet* v. *Rhinelander,* 2 Johns. Cas. (N.Y.) 476 (1802). The principle underlying these decisions is that the status of "enemy" derives from residence and that "[t]he character that is gained by residence ceases by residence. It is an adventitious character which no longer adheres to him, from the moment that he puts himself in motion, *bona fide,* to quit the country, *sine animo revertendi*". *The Indian Chief,* 3 C. Rob. 12, 20, 21 (Eng. 1801).

While in the opinions below this issue was not considered, the respondent contended that the principle thus enunciated and expressly adopted by this Court had been discarded in favor of a new principle, "once an enemy always an enemy.", in *Swiss Nat. Ins. Co.* v. *Miller*, 267 U.S. 42 (1924). But that case stands for no such principle. There the property of an otherwise neutral corporation was seized while it was "doing business" within enemy territory, and was thus an "enemy" under a definition in Section 2(a) of the Act with which we are not here concerned. Thereafter it ceased "doing business" within enemy territory and brought suit to recover the vested property, claiming to be non-enemy. In rejecting the claim, Mr. Chief Justice Taft said (267 U.S. at 44) that a "change like this could not take away the status of the seized property as enemy property". Thus all the case holds is that the date of vesting is the critical date for determining the enemy or non-enemy status of the owner of vested property. This is the traditional view that has long obtained in prize law. Thus, in *United States* v. *Guillem, supra*, the property of a French citizen who resided in Mexico during part of the war between that country and the United States, was seized *after* his departure from Mexico for France in the midst of the war. His property was returned, Mr. Chief Justice Taney saying for the Court (11 How. at 60):

> "The hostile character which his domicile in Mexico had impressed upon him and his property had * * * been thrown off; and as soon as he sailed from Vera Cruz he resumed the character of a French citizen, and as such was entitled to the rights and privileges of a neutral, in regard to his property, as well as his person."

Similarly, in *The Francis, supra,* Mr. Justice Story, sitting on circuit, said:

> "As to citizens domiciled in the enemy country, I hold it to be the established rule, that if they wish to avoid the hostile character, they must actually remove before the breaking out of hostilities. Otherwise their property then afloat will be liable to confiscation. If they do not so remove, the character of the country is completely impressed upon their property, wherever it is found, and remains until they have abandoned their residence, *and then, as to all future transactions, the character of their native or adopted country returns.* * * *" (Emphasis supplied.)

Again, in *The Venus, supra,* it was held that where an American citizen was resident within an enemy country at the time of the seizure of his property, it was properly treated as enemy because of the enemy character he derived from his residence. But Mr. Justice Washington, expressly adopting the principle laid down in *The Indian Chief, supra,* went on to say (8 Cran. at 280) that

> "* * * this national character which a man acquires by residence, may be thrown off at pleasure, by a return to his native country * * *. To use the language of Sir W. Scott, it is an adventitious character gained by residence, and which ceases by non-residence. * * * Having once acquired a national character by residence in a foreign country, he ought to be bound by all the consequences of it, until he has thrown it off * * * by an actual return to his native country * * *."[5]

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[5] Another alternative held to accomplish a termination of the enemy status of an American citizen derived from residence in enemy territory, is "commencing his removal, *bona fide,* and without an intention of returning", 8 Cran. at 281. On these pro-

And even in the case of a citizen of an enemy nation who was resident in a neutral country at the time of the seizure of his property, it was held that he was entitled to its return notwithstanding a sojourn in the territory of the enemy country of which he was a citizen. *The Friendschaft, supra.* So, too, in *Duguet* v. *Rhinelander,* where a Frenchman had in the midst of a war between France and England, emigrated to the United States from France, it was held by New York's highest court that the seizure by the English of the Frenchman's property, after he had established his residence in the United States, was unlawful.

The late vesting question did not arise with respect to World War I seizures because, pursuant to an opinion of the Attorney General consistent with the authorities cited above, but apparently now abandoned, the Alien Property Custodian voluntarily restored seized property "where the enemy character of a claimant * * * [had] been altered by a change in residence * * *". *Report of the Alien Property Custodian,* 1918, Sen. Doc. No. 435, 65th Cong., 3rd Sess. (1919) 237, 238. The question was raised but not decided in at least two cases involving World War II seizures. Thus, in *Hansen* v. *Brownell,* 234 F. (2d) 60 (D.C. Cir. 1956), the case was disposed of on other grounds, and in *Ruoff* v. *Brownell,* Civ. Action No. 4649-48, United States District Court for the District of Columbia, the action was dismissed before trial by

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nouncements the Court was unanimous. The Court split, however, on the issue of whether an intention to return not translated into action at the time of seizure would suffice. The majority held it would not, while Chief Justice Marshall, with the concurrence of Justice Livingston, held that it should be sufficient, at least where the shipment was made prior to knowledge of the outbreak of hostilities.

stipulation of the parties. The question involved is an important question of federal law arising under the Trading with the Enemy Act which has never been, and should be, settled by this Court.

## CONCLUSION

It is respectfully urged that this petition for a writ of certiorari should be granted.

Respectfully submitted,

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JAMES H. MANN
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PEHLE, LESSER, MANN, RIEMER & LUXFORD
*Of Counsel*

June, 1957

# APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 13424

HERBERT BROWNELL, JR., Attorney General, and as Successor to the Alien Property Custodian,
APPELLANT

v.

ANNI H. J. E. OEHMICHEN, APPELLEE

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Appeal from the United States District Court for the District of Columbia

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Decided February 28, 1957

*Mr. George B. Searls,* Attorney, Department of Justice, with whom *Mr. Victor R. Taylor,* Attorney, Department of Justice, was on the brief, for appellant.

*Mr. James H. Mann,* with whom *Mr. Dean B. Lewis* was on the brief, for appellee.

Before EDGERTON, Chief Judge, and PRETTYMAN and BASTIAN, Circuit Judges.

PRETTYMAN, *Circuit Judge:* Appellee Anni H. J. E. Oehmichen, widow of Erhard M. Oehmichen, brought a civil action against the Attorney General under the Trading with the Enemy Act[1] to establish her right in certain property vested by the Alien Property Custodian in 1947, 1950 and 1951. The property consisted of checking accounts in Chicago and Newark banks, shares of stock in

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[1] Sec. 9, Act of Oct. 6, 1917, 40 STAT. 419, as amended, 50 U.S.C.A. App. § 9(a).

a corporation formerly controlled by Mr. Oehmichen, and a claim against that corporation. After trial the District Court made findings of fact and conclusions of law and entered a judgment directing the Attorney General to transfer to Mrs. Oehmichen all of the property. The Attorney General appeals.

Mr. and Mrs. Oehmichen were German citizens. They entered the United States separately in 1933, were married in London in 1934, and returned to the United States that same year. They entered for permanent residence. They engaged in the importing business, principally from Germany. Shortly after the declaration of war with Germany they were arrested as enemy aliens. After a hearing before an Alien Enemy Control Board Mr. Oehmichen was ordered interned for the duration of the war. Subsequently, in December 1942, he was interned at the Crystal City, Texas, Alien Internment Camp. Mrs. Oehmichen voluntarily joined him in internment. Beginning in May, 1942, the Oehmichens from time to time filed requests for repatriation to Germany. They were finally repatriated and sailed on the Gripsholm early in January, 1945. On January 29, 1945, they arrived in German-held territory at Bregenz, Austria. They lived there until October, 1945, when they moved, first to Bavaria, then to Hamburg, and then to Wiesbaden. Mr. Oehmichen died in Wiesbaden in May, 1948. Later that year Mrs. Oehmichen went to Switzerland, obtained a visa from an American Consul, and came to the United States as an immigrant. She has since become a citizen of the United States and reestablished the import business.

Section 9 of the Trading with the Enemy Act permits any person not an enemy to institute a civil action for the recovery of property seized by the Alien Property Custodian. Section 2 of that Act defines "enemy" to include "Any individual * * * of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation with which the

United States is at war". The Attorney General argues that on the face of the statute and on the face of the facts Mrs. Oehmichen was resident within enemy territory and therefore an enemy not entitled to bring an action for recovery of seized property.

The District Court held that the Oehmichens were not resident within enemy territory, because they went there as a matter of choice in preference to internment, that choice being dictated by the rigors of internment and their difficulties with other internees. The District Court found that the Oehmichens were well treated by the authorities but that pro-Nazi groups, which were in the majority at the internment camp, "continually stirred the emotions, fears and anxieties of plaintiff and her husband." It found that Mr. Oehmichen was once physically attacked, once a stone was thrown at him, once they were shouted at, and they were ostracized by the pro-Nazi groups. The court found: "The requests for repatriation to Germany by plaintiff and her husband were made solely to escape internment and the emotional problems created thereby."

The Oehmichens were citizens of Germany and were actually living on German territory during the war. If they had had their way they would have been in Germany for the duration of the war. In May, 1942, Mr. Oehmichen executed and filed a petition for repatriation "In the event of my internment" and further petitioned that his wife be permitted to accompany him "to my native land". Thereafter letters and petitions were filed July 8, 1942, July 26, 1942, September 2, 1942, and September 4, 1942. All these requests for repatriation were made while Mr. Oehmichen was at Ellis Island and before he was sent to the internment camp in Texas. They were made before he experienced internment.

The record shows that at the internment camp the authorities provided a wide range of recreational activities, including movies twice a week, a huge swimming

pool, baseball, tennis, and badminton. There was a thirty-bed hospital. Mrs. Oehmichen testified that the food supply was very good and very adequate—"Yes, very, definitely." Mrs. Oehmichen cooked for her husband. They were supplied certain items of furniture, and if they wanted anything else they could buy it. They had a radio and also had their dog sent down from New York. Mrs. Oehmichen testified, in respect to the living conditions: "However, we would have put up with that, if we wouldn't have had the Nazi pressure in the camp."

In May, 1943, and January and February, 1944, they renewed their appeals for repatriation. On June 27, 1944, Mr. Oehmichen filed a letter, addressed to the Officer in Charge of the camp, advising him, "Should a review of my case result in a decision qualifying me for a parole, you are advised that I would not accept same." Thus he refused freedom in America. Surely that choice was not induced by difficulties in internment.

It is argued that under the rule of the *Guessefeldt* case[3] the Oehmichens were not possessed of the requisite intention to make them "resident within" Germany. We think that case does not apply here. Guessefeldt was visiting in Germany and was physically restrained from leaving it. The Court held that, being under such restraint and seeking at all times to return to the United States, he was not resident within Germany.

The Oehmichens were in Germany by their own free choice. The explanation that because of difficulties with pro-Nazis they were compelled to return to Nazi Germany is singularly unimpressive. As a legal matter we are of opinion that mere discontent with conditions in a well-run internment camp is not the compulsion which would translate otherwise voluntary repatriation into departure

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[3] Guessefeldt v. McGrath, 342 U.S. 308, 96 L. Ed. 342, 72 S. Ct. 338 (1952).

under duress. Internment is the established international treatment of resident enemy aliens by all civilized countries.[3] The Oehmichens chose to return to an enemy country rather than to undergo that established treatment.

If the argument of Mrs. Oehmichen were valid, all German citizens in the United States at the outbreak of the war could have returned promptly to Germany, exercising a wish not to be interned here, lived there until the war's end, and returned here to claim they had never been resident in Germany. Under her argument no German national residing in the United States prior to the war, and moving by choice to Germany during the war, would have become resident in Germany, as every such person was faced with the possibility of internment here. We think the statute reflects no intention to achieve such a result.

We do not have in this case anything resembling the facts depicted in such cases as *Guessefeldt, supra, Acheson* v. *Murakami,*[4] *Kaku Nagano* v. *McGrath,*[5] or *Yaichiro Akata* v. *Brownell.*[6] The Oehmichens were willing residents of Germany.

The judgment of the District Court must be reversed and the case remanded for entry of a judgment dismissing for lack of jurisdiction.

*Reversed and remanded.*

EDGERTON, *Chief Judge, dissenting.* The question is: If aliens who have long been resident in the United States choose repatriation to an enemy country in preference to imprisonment in the United States during a war, and

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[3] See full discussion in Johnson v. Eisentrager, 339 U.S. 763, 772 *et seq.*, 94 L. Ed. 1255, 70 S. Ct. 936 (1950).

[4] 176 F. 2d 953 (9th Cir. 1949).

[5] 187 F. 2d 759 (7th Cir. 1951).

[6] 125 F. Supp. 6 (D. Hawaii 1954).

always intend to return to the United States as soon as the war is over, are they, within the meaning of the Trading with the Enemy Act, "resident" in the enemy country during the sojourn there? I think not.

The District Court made the following undisputed findings, among others. The requests for repatriation to Germany "were made solely to escape internment and the emotional problems created thereby" and "were clearly limited to repatriation during the time that internment was expected to last, i.e., the duration of the war. ... Plaintiff and her husband at all times intended to return to the United States after the end of hostilities". They retained "a fixed determination" to do so. Accordingly, "At no time while they were in Austria or Germany did plaintiff or her husband seek employment or engage in business except for plaintiff's husband's employment with the United States Army of Occupation. Plaintiff's husband was offered opportunities to engage in business in Germany which he did not accept. ... After plaintiff's furnishings were stored [here], both she and her husband, while in the United States and in Europe, refused offers to buy their automobile and certain household appliances at premium prices because they planned to use these possessions again upon their return to the United States."

It is true that Oehmichen's place of confinement when he first asked for repatriation was Ellis Island. But he and his wife did not choose to return to Germany in order to avoid Ellis Island. They knew that internment for him was in prospect. The court correctly states that they "chose to return to an enemy country rather than to undergo" internment. Their internment was legal and in accordance with international usage, but it was nonetheless imprisonment. Appellant and her husband never had "any doubt" that they were "in prison". No one similarly situated would have any doubt. The internment camp was surrounded by a "very high" barbed-wire

fence, kept lighted at night. There were watchtowers and armed guards. The shelters had no plumbing. Water had to be carried in pails about a hundred feet. The bathhouses were about 500 feet away from the shelters. The fact that the food was good and there were recreation facilities did not turn the prison into something else.

In explanation of the fact that she and her husband once refused parole, appellee testified: "We felt that parole was like for any ordinary criminal. Mr. Oehmichen would have to report to a parole officer. And Mr. Oehmichen did not want to be in a waiting room with a criminal who might knock him on the shoulder and say: Buddy, how long have you been in? And that was the objection of Mr. Oehmichen to be released on parole. He did not feel he had done anything he needed to be paroled for. ... He wanted to be released without any ties attached to it. I mean, parole meant that he was paroled of some guilt, which he did not feel he had. There was no guilt. Q Am I correct in saying that he felt by applying for parole, it was acknowledgement of guilt? A That is right. Q And he felt he would be treated as any other criminal? A Any ordinary criminal. Q Now, did you share that feeling, Mrs. Oehmichen? A At the time, yes." When they learned that the conditions of parole would be less drastic than they had supposed, appellee requested her husband's release. Parole was then refused. When they left the United States, the alternative was not parole but continued imprisonment.

I do not reach appellee's other contention.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

January Term, 1957

C. A. 5090-54

No. 13,424

HERBERT BROWNELL, JR., Attorney General, and as Successor to the Alien Property Custodian,
APPELLANT,

v.

ANNI H. J. E. OEHMICHEN, APPELLEE.

United States Court of Appeals for the District of Columbia Circuit

Filed Feb. 28, 1957

JOSEPH W. STEWART, *Clerk*

Appeal from the United States District Court for the District of Columbia.

Before: EDGERTON, Chief Judge, and PRETTYMAN and BASTIAN, Circuit Judges.

**Judgment**

This cause came on to be heard on the record from the United States District Court for the District of Columbia, and was argued by counsel.

On consideration whereof, It is ordered and adjudged by this Court that the judgment of the said District Court appealed from in this cause be, and the same is hereby, reversed, and that this case be, and it is hereby, remanded to the said District Court with directions to enter a judgment dismissing the complaint for lack of jurisdiction.

Dated: February 28, 1957.

PER CIRCUIT JUDGE PRETTYMAN.

Separate dissenting opinion by Chief Judge Edgerton.

## APPENDIX B

*Trading with the Enemy Act, as amended* (40 Stat. 411, et seq., as amended, Tit. 50 U.S.C. App. § 1, et seq.):

SEC. 2. The word "enemy," as used herein, shall be deemed to mean, for the purposes of such trading and of this Act—

(a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such territory of any nation with which the United States is at war or incorporated within any country other than the United States and doing business within such territory.

* * *

SEC. 9(a). Any person not an enemy or ally of the enemy claiming any interest, right, or title in any money or other property which may have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, or to whom any debt may be owing from an enemy or ally of enemy whose property or any part thereof shall have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States may file with the said custodian a notice of his claim under oath and in such form and containing such particulars as the said custodian shall require; and the President, if application is made therefor by the claimant, may order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States, or of the interest therein to which the President shall determine said claimant is entitled: *Provided*, That no such order by the President shall bar any person from the prosecution of any suit at law or in equity against the claimant

to establish any right, title, or interest which he may have in such money or other property. If the President shall not so order within sixty days after filing of such application or if the claimant shall have filed the notice as above required and shall have made no application to the President, said claimant may institute a suit in equity in the Supreme Court of the District of Columbia or in the district court of the United States for the district in which such claimant resides, or, if a corporation, where it has its principal place of business (to which suit the Alien Property Custodian or the Treasurer of the United States, as the case may be, shall be made a party defendant), to establish the interest, right, title, or debt so claimed, and if so established the court shall order payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States or the interest therein to which the court shall determine said claimant is entitled. If suit shall be so instituted, then such money or property shall be retained in the custody of the Alien Property Custodian, or in the Treasury of the United States, as provided in this Act, and until any final judgment or decree which shall be entered in favor of the claimant shall be fully satisfied by payment or conveyance, transfer, assignment, or delivery by the defendant or by the Alien Property Custodian, or Treasurer of the United States on order of the court, or until final judgment or decree shall be entered against the claimant or suit otherwise terminated.

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FILED
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JOHN T. FEY, Clerk

No. 227

# In the Supreme Court of the United States

October Term, 1957

ANNI H. J. E. OEHMICHEN, PETITIONER

*v.*

HERBERT BROWNELL, JR., Attorney General, and as successor to the Alien Property Custodian

*On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit*

## BRIEF FOR THE RESPONDENT IN OPPOSITION

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***On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit***

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## BRIEF FOR THE RESPONDENT IN OPPOSITION

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### OPINIONS BELOW

The District Court wrote no opinion.[1] The opinion of the Court of Appeals for the District of Columbia Circuit is reported at 243 F. 2d 637.

### JURISDICTION

The judgment of the Court of Appeals was entered on February 28, 1957. A timely petition for rehearing was denied on March 29, 1957. The peti-

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[1] The District Court's findings and conclusions appear in the joint appendix (J.A.), as filed below, at pp. 21-28.

tion for a writ of certiorari was filed on June 26, 1957. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## QUESTIONS PRESENTED

1. Whether, on the facts, the court below correctly concluded that petitioner voluntarily returned to enemy territory during World War II and became resident within such territory for purposes of the Trading with the Enemy Act.

2. Whether "enemy status", once acquired, is lost, for purposes of the Trading with the Enemy Act, by a removal of a person from enemy territory while a state of war still continues.

## STATUTES INVOLVED

Sections 2(a) and 9(a) of the Trading with the Enemy Act are set forth in Appendix B to the petition for a writ of certiorari.

## STATEMENT

This suit was brought under Section 9(a) of the Trading with the Enemy Act to recover property vested by the Attorney General under that Act. The evidence may be summarized as follows:

Petitioner is the widow of Erhard Oehmichen, a citizen of Germany, who died in that country in 1948 (J.A. 21) and left his property to her by will (J.A. 21.) Erhard Oehmichen had entered the United States for permanent residence from Tokyo, Japan, in 1933 (J.A. 128). Petitioner married him in Eng-

land in 1934, and then entered the United States for permanent residence.

In the United States, Oehmichen engaged in the importing business, largely of wines and beers from Germany, first in Chicago, and later in New York (J.A. 34). Petitioner served as a director of one of his corporations and worked in the office (J.A. 35, 91).

In the course of his importing business, Oehmichen maintained a number of German contacts, business and social. One of his attorneys in New York was a man named Topken, who did legal work for the German consulate there (J.A. 91). In Chicago, he became well acquainted with one Tannenberg, connected with the German consulate and later with the Embassy in Washington (J.A. 78).

In 1939 and 1940, Oehmichen took a leading part in organizing and operating the Casino of Nations, a restaurant at the New York World's Fair which, according to him, was "held universally as the official German Exposition Place" (J.A. 177).

In March, 1942, Oehmichen and his wife were arrested as enemy aliens (J.A. 32). Petitioner was released the next day, but her husband was taken to Ellis Island, where he was detained (J.A. 96). After a hearing before an Alien Enemy Control Board at which he and his wife testified and witnesses were heard on his behalf, he was told that he would be interned for the duration of the war (J.A. 41).

Instead of being transferred immediately to an internment camp, Oehmichen, at his own request, was

permitted to stay at Ellis Island for 10 months (J.A. 91). While he was there, his wife visited him once a week and he was allowed to telephone her on two or more occasions (J.A. 76, 92). When petitioner became ill during the summer of 1942, her husband, accompanied by a guard, was allowed to visit her several times a week in their apartment (J.A. 92).

In May, 1942, while at Ellis Island, Oehmichen executed his first request that he and his wife be repatriated to Germany "[i]n the event of my internment" (J.A. 132). In July, 1942, the Oehmichens wrote two letters to the Department of State requesting repatriation (J.A. 138-139). Later, in September, 1942, while petitioner was ill, Oehmichen sent other letters requesting repatriation (J.A. 142, 143).

In December, 1942, Oehmichen was transferred to an internment camp at Crystal City, Texas. It was a "family camp," and petitioner joined him as a voluntary internee (J.A. 45, 52, 84).

While the Oehmichens were there, the Crystal City camp housed a large number of internees, sixty per cent of them Japanese and forty per cent German (J.A. 105). The authorities maintained a school system through high school, accredited by the State Board of Texas (J.A. 107), and a German school for the children of the internees who planned to return to Germany (J.A. 110). There was a thirty-bed hospital with a medical staff headed by a major of the Public Health Service and including several German and Japanese medical men from among the internees (J.A. 107).

The housing at the camp consisted of bungalows, for people with children, and shelters for the others (J.A. 106). The Oehmichens at first shared a bungalow with another couple, and later had a place to themselves in the shelter area (J.A. 79). The internees received an allowance from the Government for food and clothing, and the food was very good (J.A. 79-80, 84). The internees could also purchase things outside, and the camp had a store, a canteen, and, for the German internees, a beer garden (J.A. 80).

The internees were not required to work, but those who wanted to do so were given an opportunity to work as carpenters, mechanics, maintenance men, or farmers, or to work in the store (J.A. 54). While at the camp, Oehmichen did not apply for work, and spent most of his time playing tennis or badminton or sitting around (J.A. 106-107). He did, however, teach school for a while, but in 1943 trained teachers from a German school in Costa Rica arrived in the camp, and Oehmichen was forced out, allegedly because of a dispute in regard to teaching about Einstein (J.A. 54, 56). The camp authorities provided a wide range of recreational facilities including movies, a large swimming pool, and sports (J.A. 106). Reading matter was available, and some of the internees, including Oehmichen, played bridge (J.A. 80). The Oehmichens had a garden, a radio, a movie projector and films, and had had their dog sent down from New Jersey (J.A. 80).

For the most part, according to petitioner's testimony, they lived contentedly in the camp, except when rumors of possible repatriation excited them

(J.A. 83). The only complaint they made to the authorities of mistreatment by fellow internees related to an altercation between Oehmichen and two of the butchers in the camp store, during which his glasses were broken and his shirt torn (J.A. 82). That occurred about October of 1943 when some of the German internees, apparently the more pro-Nazi element, attempted to put through a "Camp Constitution" and created considerable contention and excitement. During the same period, a stone was thrown at Oehmichen on one occasion, there was an attempt to strike him (J.A. 81), and he was shouted at (J.A. 55).

Except for these incidents occurring in about October, 1943, there appear to have been no attempts to harm Oehmichen or threats directed to him. According to petitioner, however, he was afraid of the pro-Nazi internees, although she felt safe in the camp (J.A. 120). She also testified that on occasion he was moody and depressed, and sometimes irrational (J.A. 59, 60-61, 64).

While the Oehmichens were at Crystal City he declined to be considered for a transfer to another camp (J.A. 178-179), and later stated that he would not accept parole (J.A. 148).

In all, the Oehmichens made about a dozen written requests for repatriation, about half of them before they arrived at Crystal City and the others while they were there (J.A. 132, 136, 138, 140, 143, 144, 145, 146, 147, 180. See also J.A. 138 and 154). In addition, Oehmichen made at least one personal appeal (in February, 1944) to Mr. Kelly, the Assistant Commissioner of Immigration (J.A. 109). At that time,

he also talked with Dr. Fehr, of the Swiss legation[2] in an effort to get their names added to the list for repatriation (J.A. 180). In an earlier appeal to Dr. Fehr, on May, 1943, he had written a letter urging the repatriation of himself and his wife, and had asked Dr. Fehr to "establish communication by telephone with Mr. Tannenberg[3] in order to effect exchange with the next opportunity" (J.A. 177).

Whether as a result of these appeals, or for some other reason,[4] the names of the Oehmichens appeared on a list of persons proposed for repatriation by the German Government in November, 1944 (J.A. 181-183), and they were notified on Christmas Day that they would be repatriated (J.A. 64).

When the Oehmichens were interned, and later when they sailed for Europe, they left some of their belongings in storage in the United States (J.A. 23). According to petitioner, they intended to live in Germany for the duration of the war and until the immigration authorities should permit them to re-enter the United States (J.A. 139). They did not know when they left how long the war would last (J.A. 67, 77);[5] what they wanted to do was to find a place

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[2] Switzerland was the "Protecting Power" for German interests (J.A. 78, 110).

[3] The German diplomat Oehmichen had known in Chicago (J.A. 78).

[4] In the 1944 letter Oehmichen said they had been trying to be repatriated since April, 1942 (J.A. 180).

[5] When they left the United States the Battle of the Bulge was raging. It was Germany's last great offensive but no one could have known that at the time. The Battle of the Bulge began on December 16, 1944 and ran until at least

where they would not have to "bother about anything till the war was over", where they could "sit out the war" (J.A. 32, 51, 77).

The Oehmichens sailed early in January, 1945, on the "Gripsholm" and arrived in German-held territory about January 29, along with several hundred others (J.A. 64, 66). The German Government furnished them with ration coupons and 100 or 200 marks apiece, and also with railroad tickets to their home towns (J.A. 88). The Oehmichens, however, liked Bregenz, Austria, and they obtained a permit to live there indefinitely. They remained there until October, 1945 (J.A. 84).

While living at Bregenz, Oehmichen made a train trip to Hamburg and Dresden to inquire about relatives and to borrow money from his wife's father (J.A. 85). On this trip, he sold, for 5000 marks, two pounds of coffee, which he had bought on the boat. The Oehmichens also traded coffee for butter despite rationing regulations (J.A. 84-85). According to petitioner, they had arrived in Bregenz without funds. For a while they boarded with a private family, and, after Oehmichen's return from Dresden, they rented a "chalet" or farmhouse in the mountains near the town (J.A. 67, 85).

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January 16, 1945. *A Military History of the World War II* (edited by Stamps and Esposito, United States Military Academy, 1953), Vol. I, pp. 507-541. But, according to the petitioner, in "the first days of 1945 . . . the eventual outcome of the war was no longer in doubt" (p. 8). The petitioner also makes the statement that at the time of the first request for repatriation (May, 1942) no one doubted that it would end "in due course" (p. 21).

Oehmichen was arrested in the latter part of April, 1945, as a "political prisoner", but was released about five days later when the Allied forces approached (J.A. 23, 68-69).

The Oehmichens left Bregenz in October, 1945, going first to a resort in Bavaria, then to Hamburg, and finally to Weisbaden in the American Zone where he was employed by the Occupation authorities (J.A. 70-71). He died there May 19, 1948 (J.A. 70-71) of a congenital illness which had been discovered in the hospital at Crystal City (J.A. 127).

In 1948, petitioner went to Switzerland and obtained a visa from an American consul, arriving in the United States as an immigrant in 1949 (J.A. 75). She has since become a citizen of the United States (J.A. 76).

The bulk of the vested property which is the subject of the action consisted of checking accounts in Chicago and Newark banks and was vested in 1947 (J.A. 7-9). In 1950, the shares of stock in one of Oehmichen's corporations were vested (J.A. 9-11) and, in 1951, a claim of the petitioner against that corporation was vested (J.A. 12-14).

The District Court found that the petitioner and her husband requested repatriation in order to free him from internment; that he was highly nervous; and that his life at Crystal City was made uncomfortable by the pro-Nazi majority of the internees, although the camp authorities treated them well (J.A. 22-23). It also found that they intended to return to the United States after hostilities ended and

did not abandon their residence in the United States (J.A. 22, 25).

The court concluded that the threat of a continuance of the unpleasant situation petitioner and her husband experienced as internees did not amount to duress in the sense of a threat to their present or future welfare, but that their requests for repatriation were not the result of a free and intelligent choice (J.A. 26-27); that their physical presence in enemy territory was not a residence volitionally assumed and voluntarily acquired (J.A. 26), and that they did not have the intent required for residence (J.A. 27). It held that they were not "enemies" because they were not "resident within" enemy territory (J.A. 27), and entered judgment for the plaintiff (J.A. 28).

The Court of Appeals reversed, one judge dissenting (Pet. 1a-7a). It held that the Oehmichens were in Germany "by their own free choice" and that "discontent with conditions in a well-run internment camp is not the compulsion which would translate otherwise voluntary repatriation into departure under duress" (Pet. 4a-5a). It pointed out that, if they had had their way, the Oehmichens would have gone to Germany in May, 1942, and it found the explanation that they were compelled by difficulties at Crystal City to return to Nazi Germany "singularly unimpressive" (Pet. 3a, 4a). It also rejected the argument that, under the rule of *Guessefeldt v. McGrath*, 342 U.S. 308, the Oehmichens did not have the requisite intention to make them "resident within" Germany (Pet. 4a).

## ARGUMENT

1. The question of the "voluntariness" of the Oehmichens' presence in Germany, *i.e.*, whether petitioner should be relieved of the consequences of the decision to return to Germany for purposes of determining her eligibility to recover property vested under the Trading with the Enemy Act, turns on the particular facts of this case. The decision is without general importance. Indeed, there is not a single pending claim for the return of vested property which involves persons who, like the Oehmichens, (1) were interned while residing in the United States, (2) decided to return to their native country in preference to wartime internment here, and (3) had property in this country which was seized by the Alien Property Custodian.[6]

In any event, the decision of the Court of Appeals is correct and requires no further review. That court, citing *Johnson* v. *Eisentrager*, 339 U.S. 763, 772 *et seq.*, noted that (Pet. 5a):

> Internment is the established international treatment of resident enemy aliens by all civilized countries. The Oehmichens chose to return to an enemy country rather than to undergo that established treatment.

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[6] There are, to be sure, other pending claims for the return of seized property left by internees who returned to their native country in preference to wartime internment in the United States. But these claims, which total less than a dozen in all, are asserted by persons who were shipped to the United States for internment from various Latin-American countries of which they had been residents.

Accordingly, it held that (Pet. 4a-5a):

> * * * mere discontent with conditions in a well-run internment camp is not the compulsion which would translate otherwise voluntary repatriation into departure under duress.

Certainly, internment of an enemy alien in time of war is not wrongful, and does not in and of itself constitute duress.[7] *McGrath* v. *Tadayasu Abo*, 186 F. 2d 766, 773-774 (C.A. 9), certiorari denied, 342 U.S. 832; *Yoshio Murakami* v. *Dulles*, 221 F. 2d 588 (C.A. 9). Since the early days of this nation, it has been the law that in time of war the President may order that the citizens or subjects of enemy nations "be apprehended, restrained, secured, and removed". Alien Enemy Act, as amended, 50 U.S. C. 21. And see *Ludecke* v. *Watkins*, 335 U.S. 160; *United States* v. *Watkins*, 158 F. 2d 853 (C.A. 2); *United States* v. *Clark*, 159 F. 2d 552 (C.A. 7);

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[7] The situation is obviously different when the Government fails to protect the internees and they are put in fear of life and limb. Such was the case in *Acheson* v. *Murakami*, 176 F. 2d 953 (C.A. 9), relied on by petitioner (Pet. 15). There, Murakami's life was threatened (p. 965). In the camp at Tule Lake, there was at least one murder, a man was knifed, men were beaten up, and there was a series of assaults and a general condition of lawlessness, gangsterism and hoodlumism (pp. 962-965). Those conditions were due, the court said in the later case of *McGrath* v. *Tadayasu Abo*, 186 F. 2d 766, 773 (C.A. 9), certiorari denied, 342 U.S. 832, to the action and inaction of the officials responsible for the care of the internees; and it was not unreasonable to apply the ordinary rules as to duress. Internment alone, however, according to the *Abo* opinion, did not entitle the internees to set aside their renunciations of citizenship (p. 773).

*Citizens Protective League* v. *Clark*, 155 F. 2d 290, 294 (C.A.D.C.), certiorari denied, 329 U.S. 787.

Expatriation cases, like *Dos Reis* v. *Nicolls*, 161 F. 2d 860 (C.A. 1), stated by petitioner to be in conflict with the decision below, are plainly distinguishable. Apart from the fact that such cases deal with loss of citizenship, which is not the same as inelegibility for recovery of seized property, the facts on which relief was granted are significantly different. Thus, the *Dos Reis* case involved a dual national of the United States and Portugal who was compelled, over his protest, to serve in the Portugese army. Here, the Oehmichens were not compelled to return to Germany. They were not deported, and no one attempted to force or even persuade them to go to Germany.[8]

2. The question whether the Oehmichens had the kind of intention which would make them residents of Germany within the meaning of Section 2(a) of the Trading with the Enemy Act is also one which is essentially factual. The Oehmichens went to Germany while the war was flagrant and with the full knowledge that, once in, they could not get out while the war continued. Concededly, they planned to stay there for the duration of hostilities (J.A. 32, 51, 77). The stay they contemplated was

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[8] *Yaichiro Akata* v. *Brownell*, 125 F. Supp. 6 (D. Hawaii), also relied on by petitioner (Pet. 13-14, fn. 2), is likewise distinguishable on its facts because Akata was given to understand that he could only reunite his family, scattered among several relocation and internment camps, if he applied for repatriation (125 F. Supp. at p. 9).

thus indefinite as to time, for they did not know when they left in January, 1945, how long the war would last (J.A. 67, 77).[9] As the court below noted (Pet. 3a):

> The Oehmichens were citizens of Germany and were actually living on German territory during the war. If they had had their way they would have been in Germany for the duration of the war. * * *

On these facts, we think it clear that they were residents and not mere sojourners.

In *Guessefeldt* v. *McGrath*, 342 U.S. 308, this Court discussed the meaning of the term "resident within" and concluded that it "implies something more than mere physical presence and something less than domicile * * * " 342 U.S. 308, 312. Under this language and the legislative history cited by the Court,[10] prisoners of war and "sojourners" are ex-

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[9] That the fighting actually ended in three or four months after the Oehmichens left the United States does not alter the fact that they went to Germany with the intention of sitting it out, no matter how long that might take. When they left the United States, the Battle of the Bulge was raging, and no one could safely predict the outcome or duration of the war. See pp. 7-8, n. 5, *supra*.

[10] As to legislative history, the Court said in *Guessefeldt*, 342 U.S. at 311:

> Legislative history leaves the meaning shrouded. Some use of the term "domicile" as the touchstone of enemy status is to be found in the Congressional hearings and reports. But on the floor, Representative Montague, one of the managers of the bill, unequivocally stated under close questioning that the statutory language was intended to cover much more than those domiciled

cluded. The statute, however, must be deemed to cover one who goes voluntarily to the enemy country for an extended stay or a stay of indefinite duration. See *Ecker* v. *Atlantic Refining Company*, 222 F. 2d 618, 621 (C.A. 4), certiorari denied, 350 U.S. 847. Compare, *Commissioner of Internal Revenue* v. *Nubar*, 185 F. 2d 584 (C.A. 4), certiorari denied, 341 U.S. 925; *Buscaglia* v. *Fiddler*, 157 F. 2d 579, 581 (C.A. 1); *Commissioner of Internal Revenue* v. *Swent*, 155 F. 2d 513, 515 (C.A. 4), certiorari denied, 329 U.S. 801; *Commissioner* v. *Fiske's Estate*, 128 F. 2d 487 (C.A. 7), certiorari denied, 317 U.S. 635.[11]

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in enemy nations. Yet prisoners of war, expeditionary forces and "sojourners" were not, he said, intended to be included. 55 Cong. Rec. 4922.

[11] We fail to understand petitioner's heavy reliance on the following cases: *McGrath* v. *Zander*, 177 F. 2d 649 (C.A. D.C.); *Stadtmuller* v. *Miller*, 11 F. 2d 732 (C.A. 2); *Vowinckel* v. *First Federal Trust Co.*, 10 F. 2d 19 (C.A. 9), 15 F. 2d 872 (N.D. Cal.); *Sarthou* v. *Clark*, 78 F. Supp. 139 (S.D. Calif.); *Josephberg* v. *Markham*, 152 F. 2d 644 (C.A. 2). All were decided *prior* to this Court's decision in *Guessefeldt* v. *McGrath*, *supra*, and all were noted by this Court "without specifically approving any of them". (342 U.S. at 312). Whether the position stated in any of them as to "resident within" should be followed depends on whether it is consistent with this Court's interpretation in Guessefeldt. Nor is petitioner aided by *Kaku Nagano* v. *McGrath*, 187 F. 2d 759 (C.A. 7), affirmed, 342 U.S. 916. *Nagano* was also decided *before* this Court's decision in *Guessefeldt* v. *McGrath*, 342 U.S. 308. The affirmance of this Court by an equally divided vote (342 U.S. 916) approved only the result *i.e.*, that the case should go to trial; it did not imply approval of the principles of law stated by the Court of Appeals.

3. The property which petitioner is seeking to recover was vested by three vesting orders: one issued in 1947, another in 1950 and the third in 1951. Petitioner argues that, even if she had enemy status at the time of the 1947 vesting, the property vested in 1950 and 1951 was immune because she had left Germany in 1949. Otherwise stated, the question is whether the Alien Property Custodian's right to seize and retain property which was admittedly owned by a person who was an enemy during active hostilities may be defeated by a subsequent change of residence.

The question is not of general or current importance, and the only two cases on the point have held that a person who becomes an enemy during the war remains an enemy within the meaning of the Act, notwithstanding the fact that the conduct which brought about the enemy status ceased before the vesting of such person's property. *Hansen* v. *Brownell*, 234 F. 2d 60 (C.A.D.C.); *Sartrou* v. *Clark*, 78 F. Supp. 139 (S.D. Cal.). Cf. *Swiss Insurance Co.* v. *Miller*, 267 U.S. 42, 44. As Judge Fahy put it in the *Hansen* case, *supra* (234 F. 2d at p. 61):

> * * * We hold that a person who becomes an enemy agent during the war is an enemy within the meaning of the Act until the end of the war, though the conduct which brought about the agency relationship ceases before the vesting of such person's property [citation omitted]. There is nothing in the language of the Act which militates against this construction, and to hold otherwise would be inconsistent with the purposes and

> intent of the Act to reach assets of one who has acted for the enemy, and to make them available to assist in meeting the costs of war.

It is true that the enemy status involved in the two cases referred to above was acquired by virtue of being an "agent" of the enemy government, rather than by residence within enemy territory. But there is no basis in the language or the purposes of the Act for distinguishing between the continuance of enemy status based on agency and that based on residence.[12]

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[12] Petitioner cites prize cases for the proposition that enemy character ceases with residence. But those cases are distinguishable; they deal with the suppression of unlawful trade with persons in enemy territory. See *The Sally*, 8 Cr. 382, 384; *The Rapid*, 8 Cr. 155, 162, 163. Once a man had left enemy territory, at least if he was not an enemy citizen, it was no longer unlawful to trade with him. It does not follow that when Congress used the familiar word "resident" in Section 2, it meant to enact a limitation that enemy status ends with removal. "Resident" was also used with respect to captures on land, apparently as a test in addition to that of citizenship. *Juragua Iron Co.* v. *United States*, 212 U.S. 297, 305; *Miller* v. *United States*, 11 Wall. 268, 306.

The opinion of the Attorney General that enemy character was altered by a change in residence was issued before the decision of this Court in *Swiss Nat. Ins. Co.* v. *Miller*, 267 U.S. 42, and was not followed by the courts in that case. See, *Swiss Nat. Ins. Co.* v. *Miller*, 289 Fed. 571, 577 (C.A. D.C.). If enemy character is not altered by a removal from enemy territory after seizure of the property, it is hard to see why a removal before seizure should have that effect.

## CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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